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Current Topics.

The late Mr. Arthur Cohen.

BY THE death of Mr. ARTHUR COHEN, K.C., the bar loses one of its most distinguished members. According to the *Times* he was naturally marked out as its elected head, if there were an office here corresponding to that of the Dean of Faculty in Scotland. It so happens that this is exactly what the Attorney-General said of Sir EDWARD CLARKE at the dinner given in his honour last July; from which we gather that the bar is not so poor as to lack a choice of elective heads. A comparison between these two lawyers, one of whom happily is still with us, would be out of place, but they resemble each other in this, that each, though in different spheres, attained pre-eminence in his profession, and each failed to attain—or we had better say simply, did not attain—the judicial rank which is the natural reward of success at the bar. Sir EDWARD CLARKE has told us why this attainment did not come in his case. At the critical time he preferred politics to the bench, and later on politics failed him. In COHEN'S case politics cheated him of advancement at the outset. He was member for Southwark when the offer came, and to save a possible loss of the seat he declined it. Why it was never renewed, or if renewed, was declined, remains unknown. The days seems far distant now when COHEN was always spoken of as a fitting addition to the bench; but, instead, he remained at the bar, occupying the first rank as a learned and successful advocate and lawyer.

Solicitors and Alien Enemies.

IT SEEMS that the question of the right of an alien enemy to appear is again under consideration in the Prize Court—this time in *The Moewe* (*Times*, 30th ult.), and, of course, we do not propose to add anything to what we have already said on the subject; but we may be permitted to refer to a suggestion made by the court that solicitors are, perhaps, debarred by the Trading with the Enemy Proclamation from acting for an alien enemy. We have no doubt that under recent circumstances solicitors have frequently had to advise alien enemy clients, and

have done so without the least idea of any impropriety; but if this is really forbidden by the Proclamation, the question must be faced, since, apart from any question of propriety, such conduct is criminal under the Trading with the Enemy Act, 1914. The various matters which are forbidden are enumerated in clause 5 of the Proclamation of 9th September, and the only relevant paragraph is (9):—"Not to enter into any commercial, financial or other contract or obligation with or for the benefit of an enemy." *Prima facie*, no doubt, a solicitor enters into a contract or obligation with or for the benefit of his client, and on a wide reading of the clause it may be that a solicitor is debarred from acting for an alien enemy. Hence we are not prepared to say that the suggestion made by the court was without plausibility, though whether it need have been made is another matter. For there can be little doubt that the Proclamation is not aimed at professional relationships; if so, it would equally debar a physician from acting for an alien enemy. We have by this time advanced too far to say that an alien enemy is entirely without rights, and unless this is laid down absolutely—unless, that is, we relapse into the *ex lege* doctrine—aliens must be entitled to legal assistance, and we incline to think that the legal profession in both its branches would fail of its boasted traditions if it refused this assistance. It must be understood that in all our remarks upon the legal position of alien enemies, we distinguish between the general questions at stake, and the particular conduct of the German soldiery and their masters in the present war. That places them, or some of them, outside the pale of civilization. Who are responsible will, we hope, one day be determined by a competent tribunal. But legal matters affect lawyers and the civil population, and should be carried on with as little disturbance as is consistent with the effectiveness of military operations.

The Expiry of the Moratorium.

THE MORATORIUM is popularly said to have ended on the 4th inst., and this is true for payments which originally became due before 6th August. These were first postponed till 4th September, and then by the subsequent Proclamations to 4th October and 4th November. But payments which first fell due at a day on or after 6th August in respect of contracts made before 4th August have still a period to run which does not determine until the corresponding day up to 4th December. Thus payments originally due on 13th August or 2nd September are still, it seems, postponed to 13th November or 2nd December. But the final month's postponement depends on payment of interest in manner prescribed by the Moratorium Proclamation of 30th September (58 SOLICITORS' JOURNAL, p. 854). Thus the Moratorium will not have finally run out till 4th December, and then exemption from payment can only be obtained under the Courts (Emergency Powers) Act, 1914. There are, too, the schemes of relief devised by the Government for the Stock Exchange, and for traders whose assets are locked up abroad. The stockbrokers get an extension of their bank loans until twelve months after the conclusion of peace, or until the expiry of the Act just mentioned, whichever first happens. And traders can, under suitable circumstances, get from the Bank of England advances to meet these pre-monatorium bills, and also advances to enable them to transact fresh business. The operation of these schemes will be watched with interest, but it may be hoped that some cause will bring them to a speedy end. They depend on the continuation of the war, and that, as now carried on upon the Continent, has relapsed into mere butchery—largely, it would seem, of German schoolboys. How long is the Kaiser's crime to last?

The Espionage Court Martial.

THE TRIAL of CARL HANS LODY by court martial in London appears to have been accepted as a perfectly regular proceeding by the daily press, but in fact it was only rendered possible by the Defence of the Realm Act, 1914 (4 & 5 Geo. 5, c. 29; 58 SOLICITOR'S JOURNAL, p. 771), one of the emergency statutes passed on the outbreak of the war. This authorizes the trial by court martial of persons who contravene regulations made under the Act for the purpose, among other matters, of preventing communication with the enemy, and the penalty is the same as for offences under the Army Act which are not capital; that is, penal servitude or any of the less punishments mentioned in section 44 of the Army Act (1881, 44 & 45 Vict. c., 58). Regulations for the above purpose are contained in Part II. of the Defence of the Realm Regulations, and the liability to trial by court martial is repeated (clause 27), but of course this depends solely on the statute. Apart from statute, martial law is, according to writers on Constitutional Law, unknown in this country. "We have nothing," says Prof. DICEY (Law of the Constitution, 7th ed., p. 283), "equivalent to what is called in France the 'Declaration of the State of Siege,' under which the authority ordinarily vested in the civil power for the maintenance of order and police passes entirely to the Army." At the same time, provided war is actually being waged, a very similar result can be produced by a Proclamation that certain offences will be tried by court martial. "No doubt," said Lord HALSBURY, C., in delivering the judgment of the Privy Council in *Ex parte Marais* (1902, A. C., p. 115), "has ever existed that where war actually prevails the ordinary courts have no jurisdiction over the action of the military authorities." Fortunately, though this country is at war, no war actually prevails on English soil, and as we have said, the jurisdiction in *Lody's case* depends not on any state of martial law, but on the recent statute, with penal servitude for life as the maximum penalty. The civil courts, as *Wolfe Tone's case* (27 State Trials, p. 614) shews, have always been extremely jealous of any attempted usurpation of jurisdiction by the military.

Recovery of Payments under Affiliation Orders.

THE Affiliation Orders Act, 1914, contains in section 1 a provision as to the duties of the collecting officer in respect of affiliation orders which will generally be regarded as a salutary amendment of the law. It directs the justices who make an affiliation order, unless upon representations expressly made by the applicant they are satisfied that it is undesirable to do so, to provide in the order that all payments thereunder shall be made to the collecting officer of the court for the use of the mother of the bastard child, and it empowers the collecting officer to proceed in her name for the recovery of payments under the order. This provision corresponds to that in the County Court Acts by which all ordinary summonses—*i.e.*, summonses on plaint not required by statute to be served personally—are served by the bailiffs of the various courts. The reasons which have prescribed a special mode of service upon suitors who belong chiefly to the poorer classes apply with still greater force to affiliation proceedings. The hardship on the mother, who was compelled to seek out, and demand payment from, the father of her child, is so obvious that we can only be surprised at the delay in the amendment of the law.

Alien Enemy Defendants.

THE DECISION of BAILHACHE, J., in *Ingle* v. *Mannheim Insurance Co.* (*Times*, 30th October), on the liability of an alien enemy to be sued, depends upon special considerations arising out of the terms of the Trading with the Enemy Proclamations, and does not appear to touch the general point decided by the same learned judge in *Robinson & Co.* v. *Mannheim Insurance Co.* (*ante*, p. 7), that an alien enemy may be sued, though he cannot sue. Under clause 6 of the Proclamation of 9th September (58 SOLICITORS' JOURNAL, p. 827), transactions with enemy branches situated here are permitted; but clause 5 of the Proclamation of 8th October (58 SOLICITORS' JOURNAL, p. 882) excluded insurance transactions from the benefit of the earlier provision. In the present case, the defendant company carried on business in this country through their underwriters and agents, and they had complied with the requirements of the Companies Act, 1908, s. 274, as to foreign companies having places of business here. A loss on a policy, issued before the war, occurred about the beginning of September. Under the Proclamation of 9th September the branch here did not rank as an alien enemy, and there was no objection to an action on the policy, but its position was changed by the Declaration of 8th October. It was contended, on behalf of the defendants, that they were now in the

position of alien enemies, and that the contract was either suspended or dissolved. Mr. Justice BAILHACHE held, however, that the Proclamation of 8th October was not retrospective, and that, if it were, there was nothing to prevent payment by an enemy. Indeed, clause 7 of the Proclamation of 9th September expressly saves payments by enemies, if arising out of transactions entered into before the war or otherwise permitted. The principle is the same as that in *Robinson & Co.* v. *Mannheim Insurance Co.*; any disability imposed on alien enemies is a disability adverse to and not in favour of them.

The New Contraband Lists.

WE PRINT elsewhere the new Proclamation giving lists of absolute and conditional contraband. It is of course very desirable from the point of view of neutrals that these lists should be definitely fixed at the beginning of a war, and any change in the course of the war may lead to trouble and confusion. But under the new conditions of warfare it was almost inevitable that experience during the war should suggest important modifications of the lists first published. These were issued on 4th August (58 SOLICITORS' JOURNAL, p. 771), and were identical with those in Articles 22 (absolute) and 24 (conditional contraband) of the Declaration of London, except that aircraft were transferred from the conditional to the absolute list. By the Proclamation of 21st September (58 SOLICITORS' JOURNAL, p. 839) copper and iron ore, lead, glycerine, rubber, and hides and skins, raw or rough tanned (but not including dressed leather), which had been free, were placed in the conditional contraband list. The chief feature in the new Proclamation is the very extensive increase in the list of absolute contraband. Iron, copper, and lead are now in this list, and so are motor vehicles of all kinds, motor tyres, and rubber. Equally important is the change in item 8 in the former conditional list—"fuel: lubricants." This, as we pointed out last week, made petroleum conditional contraband only; but now it is in the absolute list under item 25—"mineral oils and motor spirit, except lubricating oils"; and other new items in the absolute list are—(4) sulphuric acid, (6) range finders, and (20) barbed wire and implements for fixing and cutting the same. The expediency—we may say, the necessity—of extending the absolute list in the above manner, in view of the circumstances of the present war, is obvious. At the same time it is possible that it may be attacked by neutrals on the ground that so many of the articles now included are *ancipitis usus*, and it is the fundamental idea of absolute contraband that it shall be useful solely for purposes of war. This is not so, indeed, even with the Declaration of London list; *e.g.*, item (7) "saddle, draught and pack animals, suitable for use in war"; these are just as suitable for use in peace; and the first British list made a further inroad on the principle by including aircraft. But the present absolute list goes a great deal further in the same direction, and, in particular, rubber and metallic ores, which in the Declaration of London are in the free list, are now absolute contraband. But cotton, and other raw materials for textile industries, remain free.

The Declaration of London.

A NEW Order in Council has also been made relative to the adoption of the Declaration of London. Mr. T. GIBSON BOWLES, who at the beginning of the war made an attack on the Declaration of Paris—which received, we believe, no support—has now, in the columns of the *Times* and the *Morning Post*, made a very violent attack on the policy of adopting the Declaration of London with modifications. The thing, he says, is impossible, inasmuch as Article 65 provides that the rules of the Declaration shall form an indivisible whole. But the point seems to have no substance. Article 65 certainly binds the powers which ratify the Declaration, and, since the Declaration was a compromise, it prohibits any Power from ratifying the Declaration with reservation of particular provisions which it regards as obnoxious. But the adoption of the Declaration by Great Britain at the present time is not a ratification. It is simply a measure taken with a view to bringing British Prize Law into harmony, as far as practicable, with that of other nations. We have never agreed with the view that Prize Law was settled for all time by Lord STOWELL. Decisions a hundred years old naturally require modification, and this is effected either by express provision, like the Declaration of Paris, or by judicial decisions founded upon changed circumstances and humaner views. It is upon this ground that it is quite competent for Great Britain to adopt the Declaration of London with such modifications as may be thought proper. It is not a ratification of the Declaration. It is a statement of the law on which Great Britain proposes to act, and it is obviously a more convenient course for neutrals than if Great Britain adhered solely to her own case-made law. There seems to be an idea in some quarters that Great Britain is quite free to act as she pleases, and even to disregard the Declaration of Paris and take enemy goods in neutral vessels. This, of course, is not so, and the interests of neutral nations, as well as justice to enemy individuals, make it necessary for the British Government to act on legal considerations and with great caution. It may be noticed that the new Order in Council drops the direction that the Drafting Committee's Report should be taken as a guide in construing the Declaration. As we have pointed out, it is quite unusual for a draftsman to be allowed in this way to define the intention of his own document. This can only be done by the document itself.

Conditional Contraband Consigned "To Order."

AS REGARDS articles which are absolute contraband, the new Order in Council, like the former one, leaves the Declaration of London to operate unchanged. Under Article 30 they are liable to capture if shewn to be destined to territory belonging to or occupied by the enemy, and the doctrine of continuous voyages applies (see 58 SOLICITORS' JOURNAL, p. 849). But, in respect of conditional contraband, important changes are made. As regards articles in this list, it must be shewn that they are destined for the use of the armed forces or a government department of the enemy (Article 33), and Article 31 lays down certain tests as to destination (see 58 SOLICITORS' JOURNAL, p. 850), while Article 35 excludes for conditional contraband the doctrine of continuous voyages (*ibid.*). To be liable to seizure it must be destined for the enemy's territory or forces direct. The former Order in Council extended Article 34 by providing that the enemy destination should be presumed to exist "if the goods are consigned to or for an agent of the Enemy State, *or to or for a merchant or other person under the control of the authorities of the Enemy State.*" We pointed out, in discussing this provision, that the words in italics were misleading, since every German merchant is in a sense under the control of his Government, and they have now been cancelled. They were in fact only aimed at merchants acting specially for the Government, and these are included as "agents." A more important change has been made in clause 5 of the former Order, which restored for conditional contraband the doctrine of continuous voyages. This it did by providing that conditional contraband, if destined for the enemy, should be liable to capture "to whatever port the vessel is bound, and at whatever port the cargo is to be discharged." All this is cancelled, and, instead, it is provided that conditional contraband shall be liable to capture on board a vessel bound for a neutral port, if the goods are consigned "to order," or if the consignee is not named or is in enemy territory. In the case of the oil steamer, *John D. Rockefeller*, which was seized last month (*Times*, 24th October), the bill of lading provided merely for delivery "on order," and she was not released until a Danish consignee was ascertained, and then, apparently, only because Denmark had placed an embargo on the exportation of oil. This has probably suggested the new form of the Order; but otherwise the doctrine of continuous voyages remains abolished under Artice 35, unless the enemy is shewn to be drawing supplies for his armed forces through a neutral country, in which case Article 35 can be excluded by notice. It must be remembered, however, that these provisions are novel, and only experience will shew whether they will work without undue friction between Great Britain and neutral countries. The United States expedient of forbidding vessels to give information as to their cargo till after thirty days from clearance does not assist matters, since it leaves Great Britain free to obtain the information by search.

Registration of Company Mortgages.

THE DECISION of ASTBURY, J., in *Re Monolithic Building Co.* (reported elsewhere), on the priority of mortgages granted by a company, is in accordance with the well-settled principle as to the effect of registration. Under section 93 of the Companies Act, 1908, certain charges created by a company require to be registered; otherwise they are void as securities on the company's property. If they are void for non-registration, of course no question of priority can arise; but in the case in question, though the mortgage had not been registered within the 21 days, it had been registered subsequently under an order of the court allowing an extension of time. This, however, was to be without prejudice to existing rights. In the meantime a later charge had been created and registered with notice of the first. Hence, since the first had now become effectual by registration, the question was whether the later charge had acquired priority by earlier registration. Under the strict policy of the Yorkshire Registries Act, 1884 (see *Battison* v. *Hobson*, 1891, 2 Ch. 403), and the Merchant Shipping Act, 1894 (*Black* v. *Williams*, 1895, 1 Ch. 408), and the Land Transfer Acts, priority of charges is determined strictly by priority of registration, and notice does not count. But unless Registry Acts are expressed in such terms as to make this construction necessary, the court looks at their real object rather than to technical compliance, and refuses priority to a later mortgagee who takes with direct notice of a prior mortgage and registers first (*Le Neve* v. *Le Neve*, Amb. 436; Laws of England, vol. 21, p. 335). ASTBURY, J., followed this rule in the present case, and held that priority of registration under section 93 of the Companies Act, 1908, does not prevail in the face of notice of the earlier unregistered charge. The question, indeed, is covered by the decision of the Court of Appeal in *New Ixion, &c., Co.* v. *Spilsbury* (1898, 2 Ch. 484), on registration of assignments of patents, to which the learned judge does not seem to have referred. There CHITTY, L.J., enunciated the principle as being, that the court will not allow a person to take advantage of the legal form appointed by statute to protect himself against prior equities of which he had actual notice.

Mr. Benjamin, Q.C.

THE WAR has driven and is driving many of the inhabitants of France and Belgium to take refuge in this country, and it is not unlikely that the residence of some of them may become permanent. Courage and high hope are needed by anyone of these fugitives who seeks to earn a livelihood in one of our crowded professions; but he may be cheered by the example of Mr. JUDAH BENJAMIN, Q.C., who joined the English bar soon after the close of the American Civil War. Mr. BENJAMIN had practised with great success in the Southern States of the Union, but American lawyers are little known in this country, and the disadvantages with which he was faced upon his entry into the English courts were obvious. First and foremost, he was fifty-five years of age, and though Sir WALTER PHILLIMORE said in his evidence before the King's Bench Commission that old age was the time for hard work—or to that effect—it would be difficult to find a barrister who commenced a successful career at an age when not a few practitioners are conscious, to some extent, at any rate, of the languor of advancing years. It may be admitted that he was an excellent lawyer, familiar with the general principles of the common law, and with the composite system of law which prevailed in the State of Louisiana. But learned lawyers have often failed in our courts, and with regard to advocacy, Mr. BENJAMIN was not without some deficiencies. He was by no means of commanding presence, he did not excel in the general strategy of handling a case before a jury, he was not successful in cross-examination, and he had a sharp and unmistakeable American accent. Those who remember his appearances at the English bar, speak chiefly of the lucidity of his statements of the points in issue, and the logical order of his arguments. But, in the words of one who knew him well, "nothing seemed to dishearten him." The book, "Benjamin on the Law of Sales of Personal Property," which he wrote not long after his arrival in England, was a success, and his practice went on increasing until 1883, when he retired from the bar, having amassed a large fortune. He had obtained a leading position in the House of Lords, the Privy Council, and the Court of Appeal. It may be added that this striking success was welcomed by the whole body of the profession.

The Business of the Courts as Affected by the War.

THE CLOSE of the Long Vacation brought with it many predictions of a certain decline of business in the Law Courts, but it remains to be seen how far these predictions were justified. If we go back to the great war with NAPOLEON between the years 1802 and 1814, we find few traces of a decline in the number of causes heard and determined by the common law judges. The reports for that period—those of Sir EDWARD HYDE EAST in the King's Bench and of Lord CAMPBELL at *Nisi Prius*—are remarkable for the importance of the points of law which were discussed before, and decided by, the different judges. It may confidently be affirmed that a material part of our law of Marine Insurance was founded on the decisions of the courts during this period. There are also cases affecting the law of shipping, and that of alien enemies, of more than ordinary interest. Our lawyers may take further comfort from the fact that the population has since those days enormously increased, and that there is little or no prospect of an interruption of our commerce with neutrals, such as that effected by the arbitrary measures of the French Emperor.

Patents and Trade-Marks Belonging to Alien Enemies.

BY JOHN CUTLER, K.C.

AS is well known, a very large number of English Patents, a considerable number of registered Trade-Marks, and a number of registered Designs, belong to German or Austrian owners—principally the former. Shortly after the war broke out an Act was passed entitled the Patents, Designs and Trade-Marks (Temporary Rules) Act, 1914. This Act was three weeks later amended by a subsequent Act. The two Acts read together provide (*inter alia*) as follows.

> 1.—(1) The power of the Board of Trade under Section eighty-six of the Patents and Designs Act, 1907, and Section sixty of the Trade-Marks Act, 1905, to make Rules and to do such things as they think expedient for the purposes therein mentioned shall include power to make Rules and to do such things as they think expedient for avoiding or suspending in whole or in part any Patent or licence the person entitled to the benefit of which is the subject of any state at war with His Majesty; for avoiding or suspending the registration, and all or any rights conferred by the registration, of any Design or Trade-Mark the proprietor whereof is a subject as aforesaid; for avoiding or suspending any application made by any such person under either of the said Acts; for enabling the Board to grant, in favour of persons other than such persons as aforesaid, on such terms and conditions, and either for the whole term of the Patent or registration or for such less period as the Board may think fit, licences to make, use, exercise, or vend, patented inventions and registered Designs so liable to avoidance or suspension as aforesaid: and for extending the time within which any act or thing may or is required to be done under those Acts.
>
> 3.—This Act and the Rules made thereunder shall continue in force during the continuance of the present state of war in Europe, and for a period of six months thereafter and no longer.

The Acts give the Board of Trade power *inter alia* (1) to avoid or suspend any Patent or licence (*i.e.*, a licence to use a patented invention) belonging to an alien enemy; (2) to avoid or suspend the registration of any Design or Trade-Mark belonging to an alien enemy; (3) to avoid or suspend any application made by an alien enemy under the Patents and Designs Act, 1907, or the Trade Marks Act 1905, including, of course, an application for the grant of a Patent, or for the registration of a Design or Trade-Mark; and (4) to grant, on such terms and conditions and for such time as it thinks fit, licences to make, use, exercise, or vend patented inventions and registered Designs liable to avoidance or

suspension: but it should be noticed that the power to licence does not extend to Trade-Marks. It may also be noticed that the powers given by the Act are only to remain in force during the continuance of the present state of war and for six months thereafter.

Three sets of Rules have been made under the Acts, one dealing with Patents, one with Trade-Marks, and the other with Designs. We intend to confine our present remarks to Patents and Trade-Marks, especially as no application has yet been made in reference to a Design.

The Rules made with reference to Patents provide (*inter alia*) as follows:—

1. The Board of Trade may, on the application of any person, and subject to such terms and conditions, if any, as they may think fit, order the avoidance or suspension, in whole or in part, of any Patent or licence granted to a subject of any State at war with His Majesty, and the Board, before granting any such application, may require to be satisfied on the following heads:—

(*a*) That the patentee or licensee is the subject of a State at war with His Majesty;

(*b*) That the person applying intends to manufacture, or cause to be manufactured, the patented article, or to carry on, or cause to be carried on, the patented process;

(*c*) That it is in the general interests of the country or of a section of the community, or of a trade, that such article should be manufactured or such process carried on as aforesaid. . . . .

The Board of Trade may at any time, in their absolute discretion, revoke any avoidance or suspension of any Patent or licence ordered by them.

For the purpose of exercising in any case the powers of avoiding or suspending a Patent or licence, the Board of Trade may appoint such person or persons as they shall think fit to hold an inquiry.

Any application to the Board for the avoidance or suspension of any Patent or licence may be referred for hearing and inquiry to such person or persons, who shall report thereon to the Board.

Provided always that the Board of Trade may at any time, if in their absolute discretion they deem it expedient in the public interest, order the avoidance or suspension in whole or in part of any such Patent or licence upon such terms and conditions, if any, as they may think fit.

2. The Comptroller may, at any time during the continuance of these Rules, avoid or suspend any proceedings on any application made under the Patents and Designs Act, 1907, and the Trade-Marks Act, 1905, by a subject of any State at war with His Majesty.

The Rules made with reference to Trade-Marks provide (*inter alia*):—

1. The Board of Trade may, on the application of any person, and subject to such terms and conditions, if any, as they may think fit, order the avoidance or suspension, in whole or in part, of the registration of any Trade-Mark the proprietor whereof is a subject of any State at war with His Majesty, and the Board, before granting any such application, may require to be satisfied on the following heads:—

(*a*) That the proprietor is the subject of a State at war with His Majesty;

(*b*) That the person applying intends to manufacture, or cause to be manufactured, the goods or any of them in respect of which the Trade-Mark is registered;

(*c*) That it is in the general interests of the country or of a section of the community, or of a trade, that the registration of the Trade-Mark should be so avoided or suspended. . . . .

The Board of Trade may at any time, in their absolute discretion, revoke any avoidance or suspension of any registration of a Trade-Mark ordered by them.

They also provide for preliminary inquiries and report by persons appointed by the Board as in the Patent Rules.

The Comptroller General and Sir CORNELIUS DALTON (an ex-Comptroller-General) have been appointed by the Board of Trade as the persons to hold the inquiries and report to the Board as aforesaid.

The term "person" in both the above sets of Rules includes a Government Department.

The procedure to be adopted on an application being made is as follows:—A copy of the application, when received, is sent to "the address for service in the United Kingdom given by the patentee, licensee or proprietor of the Design or Trade-Mark, as the case may be, or* to anyone whose name appears on the Register as having an interest in the Patent, Design or Trade-Mark." A date for hearing the application is fixed, and notified to all those interested. The applicant must produce evidence (oral or by Statutory Declaration) at the hearing to satisfy the tribunal in respect of the matters covered by (*a*) and (*b*) and (*c*) of the Rules given above, and that he himself is not an alien enemy. The patentee or proprietor of the Trade-Mark or* anyone interested as aforesaid may, on giving notice in writing, appear at the hearing, and oppose the application. The application is heard before the persons nominated, who report to the Board of Trade, and the Board then makes its order on the application.

As to Patents, the Board of Trade can by its order avoid the Patent, *i.e.*, declare it null and void for all time and for all purposes; this would enure in favour, not only of the applicant, but in favour of everyone else; or it may suspend the operation of the Patent for such time as it thinks fit. This time, we think, could not, or at all events would not, extend beyond the duration of the present war or six months thereafter. If the suspension is made *simpliciter*, it would enure in favour of everyone; but it might be made only in favour of the applicant, and this course the Board have already adopted.

If a person (not being alien enemy) wishes to make a patented article, or to use a patented process belonging to an alien enemy, he must make an application to avoid or suspend the Patent, and then on proving (by oral evidence or Statutory Declaration) the matters mentioned under (*a*), (*b*) and (*c*) in Rule 1 of the Patent Rules, he will be in a position to obtain an order avoiding or suspending the Patent; but the Board, in lieu of making such an order, may grant him a licence instead, on such terms and conditions as it thinks fit.

[*To be continued.*]

Emergency Legislation of Germany.

By CHARLES HENRY HUBERICH, of Berlin and Hamburg, Counsellor-at-Law of the United States Supreme Court Bar, and RICHARD KING, of London, Solicitor of the Supreme Court, England.

II.

Prohibition of Payments to Great Britain.—It has been pointed out that the German law does not prohibit contracts with alien enemies.

The Federal Council by Ordinance of 30th September, 1914†, has prohibited payments to persons domiciled or resident in Great Britain or Ireland, or in the British Colonies or possessions, whether in cash, bills of exchange, cheques, assignments or otherwise, and the transmission of funds or securities to such persons. Obligations, whether now due or hereafter becoming due, to natural or juristic persons, domiciled or resident in the territories mentioned, are regarded as suspended from 31st July, 1914, or from such subsequent date as they may mature. During the period of suspension no interest can be demanded, and any legal consequences resulting from non-performance that may have occurred between 31st July 1914, and 30th September, 1914, are not regarded as having taken place.

The Ordinance affects also the assignee of the obligation, unless the assignment was made before 31st July, 1914, or, if the assignee has his domicile or residence within the German Empire, was made before the Ordinance came into effect. A person who has paid on behalf of another, and is entitled to reimbursement on this ground, is in the same position as an assignee (section 2).

* It appears to us that this should have been "and."

† R.G.Bl., 1914, p. 421. Effective immediately. The Ordinance is in force as of 30th September, with the exception of section 6, relating to the penalties. Section 6 came into force on 5th October.

The debtor may deposit the amount involved, or the securities, to the credit of the person entitled at the Reichsbank (section 3), and thus free himself at once in respect of the obligation.

It is to be noted that the Ordinance takes as the point of departure, not the date of the declaration of war with Great Britain, but the date of the declaration of martial law. The prohibition of payment extends only to moneys and securities, while the suspension relates to all obligations. Interest runs to 31st July, 1914, or to the date of the maturity of the obligation, if this is a subsequent date. As the Ordinance is retroactive, it removes penalties incurred on or after 31st July, due to non-fulfilment of some term of the contract, and thus legalizes the action of debtors who failed to comply with their obligations after 31st July.

When the time for presentment for payment, or protest for non-payment, of a bill of exchange has not expired on 30th September, the time of presentment and protest is extended during the time the Ordinance is in force, and thereafter according to notification to be made by the Imperial Chancellor. These provisions apply to cheques. Additional stamp duties are not imposed (section 4).

The above provisions do not apply to obligations performable within Germany and in favour of local branches (Niederlassungen) (section 5), and, *a fortiori*, not to companies or societies organized under German law. Thus, payments to the German branches of British banks are not suspended. Payments to agents are, however, on a different footing. But section 2 applies to actions brought by a German branch against local persons for non-acceptance or non-payment of a bill of exchange payable in a foreign country (section 5).

The penalty for a violation of the Ordinance is a fine not exceeding 50,000 marks, or imprisonment for three years, or both such fine and imprisonment. The attempt is punishable.

The Ordinance also fixes the same penalty for the export, directly or indirectly, from Germany or from any other country, of goods to British territory, provided the exportation is prohibited under the general laws or proclamations relating to exports (section 6). Other trade remains legal. The Ordinance may be extended to other countries at war with Germany, and, *semble*, has now been extended to France and her possessions.

Produce Exchange Transactions.—By a law of 4th August, 1914,* the Federal Council was authorized to enact Ordinances in respect of the terms of settlement of Exchange time transactions relating to merchandise, entered into prior to 1st August, 1914, and stipulating for performance after 4th August, 1914 (section 1). The settling price is determined by the administrative authorities (Landeszentralbehoerde) of the State in which the Exchange is situated. In fixing the settling price the Board of Directors of the Exchange is to be heard, and regard is to be had to the conditions of the market prior to 1st August, 1914 (section 2). The difference in price is to be paid to the party entitled to damages (section 3).

In conformity with this Law, the Federal Council issued an Ordinance under date of 24th August, 1914,† fixing the settling days for Exchange time transactions regarding copper, tin, sugar, cotton, coffee, and rubber, as follows:—(1) For copper and tin, where delivery was to take place (*a*) in August, 1914—on 1st September; (*b*) in September, 1914—on 30th September; (*c*) in October, 1914—on 31st October; (*d*) after October, 1914—on 30th November. In the last-named case interest at the rate of six per cent. per annum, calculated to the last day of the month in which delivery was to take place, is deducted. (2) For sugar, where delivery was to take place (*a*) in August or September, 1914—on 1st September; (*b*) in October, 1914—on 1st October; (*c*) in November, 1914—on 1st November; (*d*) after November, 1914—on 15th November, with the same provision as to deduction of interest. (3) For coffee and rubber, on the first day of the month in which delivery was to take place. (4) For cotton, flour and grain, on 15th September, 1914. Where delivery was to be made after 30th September, 1914, interest at the rate of six per cent. per annum from 15th September, 1914, to the first day of the month in which delivery was to take place is to be deducted.

General Moratory Legislation.—The German Empire has passed no law declaring a general moratorium. Nevertheless, there has been a considerable mass of legislation which, in its practical effect, amounts to a moratorium.

By an Ordinance of 7th August, 1914,* it is provided that no suit can be instituted before 31st October in respect of a claim due to a natural or juristic person domiciled in a foreign country. The Imperial Chancellor is empowered to grant exceptions, and may, by way of retaliation, make these provisions applicable to any class of aliens regardless of residence. The Ordnance does not apply to domestic branches of foreign firms. The assignee acquiring title after 31st July is in the same legal position as his assignor would have been. Pending actions are continued to the date named.

By an Ordinance of the same date,† the ordinary courts (as distinguished from commercial courts) are empowered, in cases where the position of the debtor justifies such action, and the creditor is not unreasonably prejudiced thereby, to grant a stay of execution not exceeding three months, in respect of the whole or a part of a judgment, provided that the obligation upon which it was based arose prior to 31st July, 1914. The Ordinance refers only to claims for money (section 1), but it appears that it may also be extended to other cases. Interest continues to run during the stay.

This Ordinance is supplemented by one of 18th August, 1914,‡ providing that the court may, on the application of the defendant, enter a decree to the effect that the legal consequences resulting from non-performance of certain acts (*e.g.* maturing of principal by reason of non-payment of interest) shall be deemed not to have ensued, and may grant a delay not exceeding three months in respect thereto.

Finally, under an Ordinance of 8th August, 1914,§ where a bankruptcy petition is filed, and where the inability to pay is due to the war, the court may order a carrying on of the business under supervision, in lieu of bankruptcy. The provisions of the code of commerce relating to the duty of directors to wind up joint stock companies, joint-stock partnerships and associations with limited liability, in cases where liabilities exceed assets, are also suspended.‖

[*To be continued.*]

* R.G.Bl., 1914, p. 335. The Act applies only to merchandise admitted under section 50 of the Exchange Law of 8th May, 1908, and to transactions entered into under section 67 thereof.

† R.G.Bl., 1914, p. 331.

* R.G.Bl., 1914, p. 460. Effective immediately.
† R.G.Bl., 1914, p. 359. Effective immediately.
‡ R.G.Bl., 1914, p. 377.
§ R.G.Bl., 1914, p. 363.
‖ Ordinance of 8th August, 1914, R.G.Bl., 1914, p. 365.

Correspondence.

The Vacant Lunacy Mastership.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—The appointment to the vacant Mastership in Lunacy rests with the Lord Chancellor. The salary is £2,000 a year, and there is, presumably, a retiring allowance attached to the office.

Hitherto it would seem, as the result of inquiries recently made, that the appointment is held practically for life, and so there is no legal obligation upon the occupant of the office to retire, either on account of advanced age or other-like infirmity.

All will agree that 85 years is far too advanced an age to enable a Master in Lunacy to do adequate justice to the many and important duties which he is called upon to discharge.

Surely, therefore, opportunity should be taken of the present vacancy to secure that any future Master, who has attained an age to be specified, shall resign his office, if required by the Lord Chancellor.

If legislation should be necessary to give effect to this arrangement, then it could be made a condition of the appointment now to be made that the occupant should take the office subject to such regulations in this respect as may hereafter be prescribed.

78, Dean-street, Soho-square, W., Nov. 3. W. J. Fraser.

Undeveloped Land Duty.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Clients of ours have agreed to purchase land under a contract which provides for the discharge by the vendor of all outgoings up to the date of completion. No assessment for Undeveloped Land Duty having yet been made, the usual undertaking and indemnity have been required from the vendor in respect of duty accrued due prior to completion, but this is refused on the ground that the vendor is relieved from liability by section 19 of the Act of 1910, which provides that any duty for the time being unpaid shall be borne by the owner for the time being, "notwithstanding any contract to the contrary." The "owner for the time being" has decided to be the owner at the date of the assessment: *Allen* v. *Inland Revenue Commissioners* (1914, 2 K. B. 327).

The result is that our clients may find themselves saddled with a heavy liability from which no contract could have absolved them. We are unable to find that the question has been the subject of any judicial decision, but possibly this may catch the eye of someone amongst your readers who has put it to the test.—P. S. & Co.

[Our impression is that it has been regarded as hopeless to get over the express words of the Act, and that the purchaser cannot be protected.—Ed. *S.J.*]

Courts (Emergency Powers) Act.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Under section 1, sub-section (1) (*b*), of the Courts (Emergency Powers) Act, 1914, no person shall levy any distress, take, resume, or enter into possession of any property, exercise any right of re-entry, &c., except after such application to the court as the Act provides.

I should be much obliged if any of your readers could inform me whether this enactment precludes the service of a notice under section 6 of the Law of Distress Act, 1908, without leave of the court. Such notices are in practice very effective, and so far as my experience goes, no ulterior step beyond the service of the notice has been necessary.

Nov. 3. DUBITANS.

[Such a notice entitles the landlord to receive the sub-tenant or lodger's rent, and, treating this rent as "property," it may be a taking possession of property. But the Act rather seems to contemplate tangible property (see Schedule to Form II. in County Court Rules, *ante*, p. 13), and the case is hardly within its scope. The sub-rent is the proper fund for payment of the head rent. We imagine that the service of the notice would involve no great risk.—Ed. *S. J.*]

Re "Obiter Dicta."

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Your footnote (part of) to Mr. E. T. Hargreaves' letter in your Journal of last week, viz.: that "All of us, ex-Lord Chancellors included, would speak differently if we had a sufficiently intelligent anticipation of events," reminds me of a proverb I often, under similar circumstances, quote, and which is easy to remember, viz.:—

"If we only had as much foresight, as we have hind-sight,
We would know more by a * —— sight."

Pancras-chambers, 90 and 91, Queen-street, Cheapside, E.C., Nov. 2. STEPHEN BIRD.

[* Heavily censored: see War News *passim*.—Ed. *S.J.*]

CASES OF THE WEEK.

Court of Appeal.

FRANCIS, DAY & HUNTER *v.* FELDMAN & CO. No. 1.
17th October.

COPYRIGHT—LITERARY WORK—MUSIC-HALL SONG—SIMULTANEOUS PUBLICATION AT HOME AND ABROAD—"ISSUE . . . TO THE PUBLIC"—WORDS OF SECOND SONG BASED ON SIMILAR IDEA—NOT A "COPY OR COLOURABLE IMITATION"—COPYRIGHT ACT, 1911 (1 & 2 GEO. 5, c. 46), s. 1, SUB-SECTION 3, s. 2, AND s. 35, SUB-SECTIONS 1, 3.

Twelve copies of a song composed in America were sent by the owners of the American copyright to publishers in London, with instructions to copyright the song in the United Kingdom on a day named, on which day the firm filed one copy in their office, sent five to the British Museum and University Libraries, and exposed the remainder in an open box, marked "New Publications," on a counter in their retail department. There was no sale until some time later, when the song had been performed in public.

Held (*affirming* Neville, J.), *that this was a publication in the United Kingdom on the day in question.*

To constitute infringement it is not sufficient for a second work to be based on the same idea as, or to contain similarities of diction to, the original work; it must be a copy or colourable imitation.

Held, on the facts (*reversing* Neville, J.), *that there was no infringement.*

Appeal by the defendants from a decision of Neville, J. (reported 59 SOLICITORS' JOURNAL, 654), granting an injunction to restrain the defendants from publishing a song as an infringement of the plaintiffs' copyright in another song. The plaintiffs were the owners of the copyright in a song, entitled, from the first line of the chorus, "You made me love you (I didn't want to do it"). The song was written in America, and was first published simultaneously in New York and Toronto on the 5th of May, 1913. The owners of the American copyright previously sent twelve copies of the song to the plaintiffs, with instructions to copyright it in the United Kingdom on the same day. The plaintiffs sent five of these copies to the British Museum and University Libraries, filed one in their office, and placed the remainder in an open box, marked "New publications this week," on the counter of their London shop. They did not advertise the song or sell any copies until July, when the song was performed at the Chiswick Empire for the first time in England. In August it was sung at the Palace Theatre, and at once became a popular success. The defendants then published a song entitled "You didn't want to do it, but you did," which purported to be a reply to be sung by a man to the plaintiffs' song, which was sung by a woman. The plaintiffs then brought this action, claiming an injunction and damages, on the ground that the defendants' song was an infringement of their copyright. The defendants contended that the publication by the plaintiffs of "You made me love you" in this country on the 5th of May was colourable only, and not intended to satisfy the reasonable requirements of the public. Neville, J., held that there was a publication within the Act on the 5th of May, and that the defendants' song was "based on a colourable imitation" of the words of the plaintiffs' song, and granted the injunction asked for. The defendants appealed.

THE COURT dismissed the appeal on the first point without calling on counsel for the plaintiffs, but allowed it on the second.

Lord COZENS-HARDY, M.R., said that it was important to consider what was and what was not an infringement, having regard to the definition of the word in the Copyright Act, 1911. It meant a copy or a colourable imitation. The question, therefore, was not whether the defendants used the plaintiffs' song in the sense of being familiar with it, but whether they had made more than a fair use of it, so as to produce a copy or a colourable imitation. He did not propose to go through the similarities of the two songs, but, comparing the two, it would be seen that they both had the same idea—an idea as old as the hills. But apart from that common idea, and a similarity of jingle in the chorus there was no colourable imitation. He was, in fact, more struck by the absence than the presence of the similarities. He regretted that such rubbish as was found in both of these songs should be brought before the court, or be entitled to the protection of the law, but it was so. With great respect to the learned judge his decision on this point could not be supported, and the appeal would be allowed with costs.

KENNEDY AND SWINFEN EADY, L.JJ., delivered judgment to the same effect.—COUNSEL, *D. M. Kerly*, K.C.; *C. E. Jenkins*, K.C., and *E. J. MacGillivray*. SOLICITORS, *Strong, Buckmaster & Bolden; P. J. Rutland*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

Re MONOLITHIC BUILDING CO. TACON *v.* THE COMPANY.
Astbury, J. 20th October.

COMPANY — MORTGAGES — PRIORITY — REGISTRATION — NOTICE — UNREGISTERED MORTGAGE — DEBENTURE SUBSEQUENTLY ISSUED TO DIRECTOR AND REGISTERED—NOTICE OF NON-REGISTRATION OF FIRST MORTGAGE—COMPANIES (CONSOLIDATION) ACT, 1908 (8 ED. 7, c. 69), s. 93.

The object of registration of charges under section 93 of the Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), is to insure means of notice to those who contemplate giving credit to the company. Accordingly, where, through a misapprehension, an earlier mortgage was not at first registered, but a later mortgagee who had registered his mortgage, and his assignee, had notice of the earlier mortgage, and also notice of the defect of registration.

Held, that the equitable doctrine enunciated by Lord Eldon in Davis *v.* The Earl of Strathmore (16 *Ves., at p.* 428), *that a person who registered a mortgage with notice of a prior unregistered mortgage, should not be allowed to obtain a priority, applied, and that the later mortgagee and his assignee were precluded from relying on section* 93.

The decisions under the Middlesex Registry Act, 1708 (7 *Anne, c.* 20), *and the Judgments Act,* 1885 (18 *& 19 Vic. c.* 15), *are in pari materia, but decisions under the Bills of Sales Acts,* 1855 *and* 1878 (17 *& 18 Vict. c.* 36 *and* 41 *& 42 Vict. c.* 31), *are not.*

Le Neve *v.* Le Neve (1748, 3 *Atk.* 646) *followed.*
Edwards *v.* Edwards (1876, 2 *Ch. D.* 291) *not followed.*

The plaintiff in this action took a mortgage of Blackacre from the company to secure £500 and interest. The company's seal was affixed to this in the presence of one Jenkins and another director and the secretary of the company. The solicitor for the company acted for both parties, and owing to a misstatement of law in a well-known text book the mortgage was not registered under section 93 of the Companies (Consolidation) Act, 1908. Subsequently the company issued to the plaintiff a first mortgage debenture to secure another advance, stated in the document to be independent and separate from the first advance, and creating a floating charge on the company's undertaking and assets, including the property comprised in the mortgage. This debenture was sealed in the presence of the same persons and registered under section 93. Subsequently the company issued a second mortgage debenture to the defendant Jenkins to secure an advance. This debenture was expressly made subject to the plaintiff's debenture, but did not mention the mortgage. The debenture was sealed in the presence of Jenkins and another, and registered. The defendant Jenkins sub-mortgaged this mortgage to the defendant Calway to secure an advance. It was then discovered that the plaintiff's mortgage required registration, and on an application to the court the time to register it was extended without prejudice to existing rights, and it was subsequently registered. The mortgage interest being in arrear, and interest not having been paid on the first debenture, the plaintiff brought this action to enforce her securities. The defendants Jenkins and Calway contested the priority of the plaintiff's mortgage. The question was whether the notice to Jenkins and Calway precluded their relying on section 93 of the Companies (Consolidation) Act, 1908. Counsel for the plaintiff maintained that the sole object of registration under section 93 was to give notice of mortgages to the public. He relied on the decisions as to the effect of non-registration under the Middlesex Registry Act, 1708 (7 Anne, c. 20) and the Judgments Act, 1855 (18 & 19 Vict. c. 15), as being *in pari materia*. Counsel for the defendants relied on the language of section 93, which says that the mortgage "shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company." He also contended that notice was immaterial, and relied on the decisions under the Bills of Sale Acts, 1854 and 1878 (17 & 18 Vict. c. 36 and 41 & 42 Vict. c. 31), such as *Edwards* v. *Edwards* (1875, 2 Ch. D. 291) and *Re Roberts* (1887, 36 Ch. D. 196).

Astbury, J., after stating the facts, said: The plaintiff in this case is entitled to priority over the defendants Jenkins and Calway, who both had notice of her mortgage, which by an innocent mistake of the plaintiff and the company and their advisers had not been registered. The object of registration is to insure the means of notice to those who contemplate giving credit to the company. This is shewn in the case of *Re Cardiff Workmen's Cottage Co.* (1906, 2 Ch. 627), which is a decision under sections 14 and 15 of the Companies Act 1900 (63 & 64 Vict. c. 48). I elect to follow the distinction suggested by Lord Eldon in *Davis* v. *The Earl of Strathmore* (1810, 16 Ves. Jun., at p. 428), as to when the equitable doctrine that a person who registered a mortgage with notice of a prior unregistered mortgage should not be allowed to obtain a priority could be applied, and when it could not be so applied. I hold that the policy of registration provided for by section 93 of the Companies (Consolidation) Act, 1908, is of the same character as that under the Middlesex Registry Acts and the Judgments Act, 1855, and accordingly I hold that the decisions under these Acts are *in pari materia* with the present case; such cases as *Le Neve* v. *Le Neve* (1748, 3 Atk. 646) and *Ford* v. *White* (1852; 16 Beav. 120), which were decisions under the Middlesex Registry Act, 1708, and *Greaves* v. *Tofield* (1880, 14 Ch. D. 563), which is a decision under the Judgments Act. On the other hand, I do not consider that the cases which have been cited to me on the other side, which are cases under the Bills of Sale Acts, 1854 and 1878, are equally material, because avoidance under that Act is not merely for want of registration but for want of form, the words being "null and void to all intents and purposes whatsoever." The policy of section 93 of the Companies (Consolidation) Act, 1908, is of the same character as the policy of the Registry Acts, and I accordingly hold that the defendants Jenkins and Calway, who had full notice of the unregistered mortgage, are postponed to it.—Counsel, *The Hon. Frank Russell*, K.C., and *Lyttelton Chubb; Sir Chas. Macnaghten*, K.C., and *J. W. Manning; Gerard M. Hildyard.* Solicitors, *Farrer, Porter, & Co.*, for *Bertram R. Yorke*, Eye, Suffolk; *C. Beaumont Cottam; Rawle, Johnstone & Co.*, for *Little & Whittingham*, Stroud.

[Reported by L. M. May, Barrister-at-Law.]

Re **WILLIAM COWARD & CO. (LIM.).** Neville, J. 22nd October.

Mortgage—Interest in Arrear—Mortgagor Out of the Jurisdiction—Right of the Mortgagee to Re-enter—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78)—Courts (Emergency Powers) Rules, 1914, r. 14.

Where the interest upon a mortgage was in arrear and the mortgagor was in America, upon an application by the first mortgagees under the Courts (Emergency Powers) Act, 1914, which was supported by subsequent mortgagees, the court gave the applicants leave to go into possession of the mortgaged premises.

This was an application under rule 14 of the Courts (Emergency Powers) Rules made under the Courts (Emergency Powers) Act, 1914. By section 1 (*b*) of that Act it is provided that no person shall "enter into possession of any property, exercise any right of re-entry, foreclose, realise any security (except by way of sale by a mortgagee in possession) . . . for the purpose of enforcing the payment or recovery of any sum of money to which this sub-section applies, or, in default of the payment or recovery of any such sum of money, except after such application to such court and such notice as may be provided for by rules or directions under this Act." The applicants were the first mortgagees of certain leasehold tenements in Marylebone-road, and their application was supported by subsequent mortgagees. They applied for leave to enter into possession of the premises because the interest was in arrear and the mortgagor was in America. Counsel for the applicants contended that this was a proper case in which leave should be granted.

Neville, J., after stating the facts, said: I give leave for the applicants in this case to go into possession and to add their costs to their security.—Counsel, *Joseph Tanner.* Solicitors, *Rawlings & Rawlings.*

[Reported by L. M. May, Barrister-at-Law.]

Probate, Divorce, and Admiralty Division.

FENGL *v.* **FENGL.** Evans, P., and Deane, J. 19th, 27th October.

Separation—Evidence—Unstamped Agreement to Live Apart—Stamp Act, 1891, s. 14, sub-section 4.

A written agreement between husband and wife to live separate and apart is within the Stamp Act, 1891, section 14, sub-section 4, and, if unstamped, is inadmissible in evidence to prove that the separation was by agreement.

This was an appeal from an order, dated 24th July, 1914, made by the justices of the Petty Sessional Division of Bakewell, Derbyshire, under the Summary Jurisdiction (Married Women) Act, 1895, whereby they adjudged that the husband had deserted the wife, and ordered him to pay her an allowance of £1 a week. In the course of the proceedings before the justices, a written agreement was tendered on behalf of the husband as evidence that the husband and wife had separated voluntarily; its admissibility as evidence was objected to on behalf of the wife on the ground that it was unstamped. The justices, after reserving their decision, held that the unstamped agreement was inadmissible as evidence. The husband now appealed from the order of the justices on the ground of wrongful rejection of evidence. Counsel for the appellant submitted that the unstamped agreement should have been admitted for the purpose of shewing that the parties had agreed to live separate and apart; that was a collateral purpose. He referred to *Matheson* v. *Ross* (1849, 2 H. L. C. 286), *Ponsford* v. *Walton* (1868, L. R. 3 C. P. 167), and the Stamp Act, 1891. Counsel for the respondent *contra.*

The President, in the course of his judgment, said that the unstamped document was tendered in evidence to prove that the separation had been by agreement, but that was the main point in issue between the parties. On the authority of *Matheson* v. *Ross* (*supra*) it was not admissible in evidence for such a purpose. Further, in his opinion, the terms of the Stamp Act, 1891, s. 14, sub-section 4,—which provides that an unstamped document shall not, except in criminal proceedings, be given in evidence "for any purpose whatever,"—were wide enough to exclude the tendering of an unstamped document as evidence even for a collateral purpose. The document had rightly been rejected by the justices.

Bargrave Deane, J., concurred. Appeal dismissed with costs.—Counsel, *Inskip*, K.C., for the appellant; *W. O. Willis*, for the respondent. Solicitors, *Gascoyne, Wadham, Tickell & Co.*, for *Goodwin & Cockerton; Campion & Co.*, for *R. J. Watts.*

[Reported by Clifford Mortimer, Barrister-at-Law.]

CASES OF LAST SITTINGS.

Court of Appeal.

ADAM STEAMSHIP CO. (LIM.) *v.* **LONDON ASSURANCE CORPORATION.** No. 2. 25th July.

Discovery—Documents—Privilege—Documents Coming into Existence in Contemplation of Litigation—Practice—S. C. 1883, Ord. 31.

The plaintiffs' steamship, which was insured with the defendants, ran ashore and stuck fast in the mud near Perim, in the Red Sea, on the 28th of October, 1913. It was impossible to get her off until after the rains in the spring, and on the 30th of October notice of abandonment was given the defendants. The defendants employed a salvage association to protect their interests, and cables and correspondence passed between the salvage association and their agents at Perim, which were communicated to the defendants. The writ was taken as having been issued on the 30th of October. The defendants, in setting out their list of documents

in compliance with an order for discovery, put in Part I. cables and correspondence which passed between the salvage association and their agent at Perim up to and including the 30th of October, and claimed no privilege as to them, but for subsequent cables and correspondence they claimed privilege as documents relating "to the subject-matter of this litigation, and expressing or for the purpose of obtaining advice or evidence to be used in it, or for the purpose of leading to the obtaining of evidence to enable the defendants' solicitors properly to conduct the action on their behalf."

Held, that the documents in Part II. were exempt from production.

Decision of Bailhache, J., in chambers reversed.

Birmingham and Midland Motor Omnibus Co. (Limited) *v.* London and North-Western Railway (57 SOLICITORS' JOURNAL, 752; 1913. 3 *K. B.* 850) *followed.*

Appeal from an order of Bailhache, J., in chambers, who gave the plaintiffs leave to inspect certain documents as to which privilege was claimed. The action was by shipowners against underwriters upon a policy of marine insurance to recover for the constructive total loss of their steamship *Aberlour*. *The Aberlour* ran ashore off Perim, in the Red Sea, on the 28th of October, 1913. It was impossible to get her off until the spring tides, and therefore the shipowners gave notice on the 30th of October of abandonment. The defendants refused to accept the notice, and employed a salvage association to protect their interests, and from and after the 28th of October, 1913, several cables and letters passed between the association and their agents at Perim, and were communicated to the defendants. On the 26th of January, 1914, the writ in the action was issued, claiming £36,000, the vessel's insured value, as and for a constructive total loss. *The Aberlour* was floated in April. In these circumstances two questions would have to be tried: (1) Was it reasonably likely that she would be got off; and (2) if so, would the costs of repairs exceed the value insured for. In their list of documents the defendants set out in Part I. copies of the cables and letters received from the salvage association from the 28th of October to the 30th of October inclusive, which they did not claim to be privileged from production. Part II. was as follows:—Cables and correspondence which passed between the salvage association and their agent in Perim and other persons and came into existence on and after the 30th of October 1913 . . . such cables and correspondence being with regard to the subject-matter of this litigation, and expressing, or for the purpose of obtaining advice or evidence to be used in it, or for the purpose of leading to the obtaining of evidence to enable the defendants' solicitors properly to conduct the action on their behalf." The plaintiffs applied for leave to inspect the documents comprised in Part II. Bailhache, J., held that they were not privileged, and made the order as asked. The defendants appealed, and submitted that the rule as to privilege from inspection of documents as laid down in *Jones* v. *Great Central Railway* (53 SOLICITORS' JOURNAL, 428; 1910. A. C. 4), had been altered and enlarged by the decision in *Birmingham and Midland Motor Omnibus Co.* v. *London and North-Western Railway Co.* (57 SOLICITORS' JOURNAL, 752; 1913. 3 K. B. 850), which now governed the question. The later case decided that information obtained for the solicitor, in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, was exempt from discovery, although the matter had not been placed in the defendants' solicitor's hand in the sense that they had been instructed to prepare a defence.

BUCKLEY, L.J., after dealing with the facts, said that in his opinion the present case fell within the principle laid down in the *Birmingham Omnibus case*, and that the documents in Part II. were privileged from inspection.

KENNEDY, L.J., concurred. He laid no stress upon the fact that, for reasons which were perfectly intelligible, the writ was to be taken as having been issued on the 30th of October. The cables and letters were sent after the parties were at arm's length, and he was of opinion that, following the *Birmingham Omnibus case*, these documents must be considered privileged from inspection, as they were obtained for the purpose of being used in litigation then contemplated by both parties, if litigation resulted.

PHILLIMORE, L.J., agreed. The only question was whether the parties were then at arm's length. He thought they were so soon as notice of abandonment had been given. Appeal allowed.—COUNSEL, for the appellants, *A. H. Chaytor*; for the respondents, *E. J. MacGillivray* (*F. D. MacKinnon* with him). SOLICITORS, *Waltons & Co.*; *Thomas Cooper & Co.*

[Reported by ERSKINE REID, Barrister-at-Law.]

WYNN *v.* CORPORATION OF CONWAY. No. 1. 17th July.

LANDLORD AND TENANT—LEASE—COVENANT TO RENEW—CONSTRUCTION—PERPETUAL RENEWAL—PRESUMPTION.

A lease for twenty-one years, made in 1824, contained a covenant by the lessors to grant a new lease for a similar term at the expiration of the first eleven years upon surrender of the existing lease and payment of a fine, and "so often as every eleven years of the said term" should expire, to renew the lease upon the same terms. The lease was surrendered and renewed from time to time. In 1912 the lessee offered to surrender the lease, but the lessors declined to renew it.

Held (affirming Joyce, J.), that, notwithstanding any presumption to the contrary, the covenant must be construed according to its plain meaning, and that, so construed, it conferred upon the lessee a perpetual right of renewal every eleven years.

Appeal from a decision of Joyce, J. (reported 58 SOLICITORS' JOURNAL, 432). By a lease dated the 29th of September, 1824, the defendant corporation demised certain premises to the plaintiff's predecessors for a term of 21 years from that date at an annual rent of 8s. By the lease the lessors covenanted with the lessee that they, the lessors, would, at the expiration of the first eleven years of the term, upon the lessee surrendering the term, and paying a fine of £7 10s., grant to the lessee a new lease of the premises thereby demised for the term of twenty-one years from the expiration of the eleven years at, with, and under the like rents, covenants, and agreements, as in those presents mentioned, "and so often as every eleven years of the said term shall expire, the lessors will grant and demise unto the lessee such new lease of the said premises upon surrender of the old lease as aforesaid, and paying such fine of £7 10s. on the day or time hereinbefore limited or appointed." The lease was surrendered and renewed from time to time in the same form, the last date upon which this was done being the 5th of August, 1901, when it was renewed for a term of twenty-one years from the 29th of September, 1901. On the plaintiff applying for a renewal on the 28th of September, 1912, the defendant corporation declined to grant one, whereupon the plaintiff commenced this action for specific performance of the covenant, contending that he was entitled thereunder to a perpetual right of renewal upon surrender of the existing lease and payment of the fine. On behalf of the defendants it was contended that there was a presumption against perpetual renewal, and that the words were too vague to be construed in that sense. Joyce, J., held that any such presumption must yield to the plain language of the lease, which clearly, he thought, gave a right, under certain conditions, of perpetual renewal, and following *Hare* v. *Burges* (4 K. & J. 45) and *Rochford* v. *Hackman* (9 Hare, 483) gave judgment for the plaintiff. The defendants appealed.

THE COURT dismissed the appeal, the Master of the Rolls observing that he agreed so entirely with the judgment of Joyce, J., and the reasons he gave for his decision, that he could hardly add anything fresh to it.—COUNSEL, *Hughes*, K.C., and *J. M. Gover*; *Macmorran*, K.C., and *J. Tanner*. SOLICITORS, *Jaques & Co.* for *W. T. Jones*, Bangor; *Dunbertons & Son*, for *Picton-Jones & Roberts*, Pwllheli.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

GOLDSOLL AND THE LONDON TECLA GEM CO. (LIM.) *v.* GOLDMAN AND OTHERS. Neville, J. 20th, 21st, 22nd, 23rd, 24th, and 27th July.

COVENANT IN RESTRAINT OF TRADE—REASONABLE PROTECTION—SEVERABILITY OF THE COVENANT—CAUSE OF ACTION—PROCURING BREACH OF THE COVENANT—PROOF OF DAMAGE.

Damages need not be proved to support an action for maliciously inducing, procuring and inciting persons to commit a breach of a covenant in restraint of trade, but they can be inferred from the facts.

The principle of Exchange Telegraph Co. (Limited) *v.* Gregory & Co. (1896, 1 *Q. B.* 14) *applied.*

The severability of covenants in restraint of trade adversely commented upon.

The plaintiff carried on business as a dealer in real and imitation jewellery under the style of Tecla, and the defendant Goldman held practically all the shares and debentures in a company carrying on a similar business, known as Terisa (Limited). By an indenture dated the 25th of June, 1912, it was agreed that the plaintiff should sell his business to a company in which the defendant Goldman was to take up shares, and Goldman agreed that for ten years from the 31st of October, 1912, he would not either solely or jointly with or as agent and employer for any person or persons or company directly or indirectly carry on or be engaged, concerned or interested in or render services (gratuitously or otherwise) to the business of a vendor of or dealer in real or imitation jewellery in the county of London, England, Scotland, Ireland, Wales, or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man, or in France, the United States of America, Russia or Spain, or within twenty-five miles of Potsdamer Strasse, Berlin, or St. Stefans Kirche, Vienna. The defendant Goldman also agreed that he would acquire the complete legal ownership of the business of Terisa (Limited), and the right to use the name Terisa, and would cause the business to be discontinued and all the stock-in-trade and assets sold in the ordinary way of business before the 31st of October, 1912, and would not until the 31st of October, 1922, allow the name Terisa to be used or employed in connection with the sale of or dealing in real or imitation jewellery. There was a further agreement of the 2nd of November, 1912, whereby the parties agreed that the period of ten years should be shortened to two. Goldsoll and the London Tecla Gem Co. (Limited), which had taken over the Tecla business, sued Goldman, S. Sessel & Co., and J. H. Sessel, alleging that Goldman had transferred a large part of the stock-in-trade of Terisa (Limited) to J. H. Sessel, who was the former managing director of Terisa (Limited), and his wife had given to them a register of the names of customers of that business, and had practically enabled them to carry on the old business of Terisa (Limited) in competition with the plaintiff company under the name of S. Sessel & Co., and that he owned or was interested in the said business, and that J. H. Sessel and Sessel & Co. had incited, procured, and induced him to commit the alleged breaches of covenant. They claimed damages

against J. H. Sessel and Sessel & Co., and against all the defendants an injunction.

NEVILLE, J., after stating the facts and commenting very unfavourably on the present position of the law as to covenants in restraint of trade, and pointing out in forcible language the great hardship which that law in many cases entailed, and giving as his personal opinion that such covenants ought not to be construed as severable, said: I am, however, bound to follow the cases, and I find on the facts that the covenant has been broken, and that the defendant J. H. Sessel was fully aware of the covenant, and that the facts show and amount to a breach of the covenant by the defendant Goldman. I also hold that the covenant is severable, and though it would have been too wide unless severable, the part of it confined to any part of the United Kingdom of Great Britain and Ireland and the Isle of Man is not too wide, having regard to the fact that the plaintiffs' business is carried on chiefly by advertisements in illustrated papers which circulate through all that area. I also hold that J. H. Sessel has committed an actionable wrong against the plaintiffs. This is, in my opinion, a case where damages are essential to the right of action, and there is here evidence of damage which in my judgment is sufficient. Moreover, I consider that in the authorities quoted to me, and more especially in the case of the *Exchange Telegraph Co.* v. *Gregory & Co.* (1896, 1 Q. B. 147) damages may be inferred in certain cases. I accordingly grant the injunction against all the defendants, and damages which I assess at £10 against Sessel and Sessel & Co., and costs against all the three defendants.—COUNSEL, *Jenkins*, K.C., *Schwabe*, K.C., and *W. E. Vernon*; *Rigby Swift*, K.C., and *Lincoln Reed*; *Peterson*, K.C., and *A. H. Droop*; *Dighton Pollock*. SOLICITORS, *J. R. Cardew-Smith*; *W. B. Glasier*; *Beardall & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

Re **WESTFIELD. BARBER** *v.* **COOPER.** Joyce, J. 27th March.

WILL—CONSTRUCTION—GIFT OF FREEHOLD—"FREE OF ANY INCUMBRANCES"—MORTGAGE—ESTATE DUTY—SUCCESSION DUTY—INCIDENCE.

A testator by his will devised a freehold house "free of any incumbrances" to the vicar and churchwardens of St. M. as a vicarage or clergy-house. The title deeds had been deposited with a bank to secure an overdraft.

Held, that the devisees were entitled to take the devised property free of estate and succession duties.

A testator, by his will dated the 8th of July, 1908, devised a freehold messuage and premises "free of any incumbrances" to the vicar and churchwardens of his parish and their successors, to be used as a vicarage or clergy-house for the parish church. The testator also directed his executors to pay all debts, funeral and testamentary expenses out of his residuary estate, and directed that all legacies, annuities and weekly sums given by his will or any codicil thereto should be paid "free and clear of estate and legacy duty." For the purposes of his business the testator had an overdraft at his bank, in respect of which a large amount was owing at the date of the death, and as security for which had been deposited the title deeds of the house, the subject of the above-mentioned gift, and of other freehold and leasehold hereditaments. The testator died on the 19th of October, 1912. This summons was taken out by the executors to determine, *inter alia*, whether by reason of the words in the will "free of any incumbrances" the house in question was devised free from any and what duties. On behalf of the residuary legatees it was contended that the devisees should bear the estate and succession duties chargeable in respect of the house.

JOYCE, J., in giving judgment, said that in his opinion, unless the estate duty and succession duty were paid out of the residuary estate of the testator, the devisees would in effect take the property subject to a statutory charge for each of those duties, which would be contrary to what was apparently the intention of the testator. Upon the true construction of the will the testator intended to relieve the devised property from all charges, and to throw upon his residuary estate the burden of the payment of the duties in question. The devisees would accordingly take the devised property free from estate and legacy duties, which would be payable out of the residuary estate.—COUNSEL, for the plaintiffs, *W. M. Hunt*; for the devisees, *Jenkins*, K.C., and *R. J. Morrison*; for the residuary legatees, *Peterson*, K.C., and *F. H. Errington*; for the Attorney-General, *J. Austen Cartmell*. SOLICITORS, *Jaques & Co.*, for *Turnbull & Sons*, Scarborough; *A. F. & R. W. Tweedie*, for *Watts, Kitching, & Donner*, Scarborough; *Treasury Solicitor*.

[Reported by R. C. CARRINGTON, Barrister-at-Law.]

Re **MRS. MARY CLARK.** C.A. No. 1. 30th and 31st July.

BANKRUPTCY—ACT OF BANKRUPTCY—BANKRUPTCY NOTICE—MARRIED WOMAN—CARRYING ON A TRADE OR BUSINESS—BANKRUPTCY ACT, 1913 (3 & 4 GEO. 5, c. 34), s. 12.

Where a judgment has been obtained, after the date when the Bankruptcy Act, 1913, came into operation, against a married woman who carries on a trade or business, it is available for proceedings against her by bankruptcy notice, although the judgment debt was incurred before the Act came into force.

A woman who promotes hotel companies carries on a business within the meaning of section 12 of the Bankruptcy Act, 1913.

Appeal from the decision of one of the registrars of the High Court setting aside a bankruptcy notice. Prior to 1906 the debtor, then Mrs. Laurence, was the owner of four houses in Berners-street, which she joined together and turned into the Hotel York, of which she was proprietor and manager. In 1906 she sold the Hotel York to a company, of which she became managing director, taking the purchase-money in shares. At the same time she took by deed poll the name of Mrs. Mary Clark, which she still uses for business purposes, though she has since married a Mr. Todd. Shortly afterwards she acquired the Berners-street Hotel, as an addition to the Hotel York, and in 1908 she sold it to the company. She then became managing director of the Endaleigh Palace Hotel (Limited), and registered proprietor of nearly all the shares in that company. Lastly, she entered into a scheme to acquire the site of the Princess' Theatre, and build a hotel on it. A company was formed called the "Princess' Hotel (Limited)," of which she became managing director, and in which she held a large number of shares. In connection with this enterprise Mrs. Clark borrowed £25,300 from the judgment creditor, to enable her to acquire the properties to be turned into the hotel. The prospectus announced that she was the vendor of the properties to the company, and that she contracted to pay the dividends on the preference shares during the period of construction, and that her contract to pay was guaranteed by the Hotel York (Limited). The money owing to the judgment creditor was advanced before the Bankruptcy Act, 1913, came into force, but on the 7th of May, 1914, after it had come into force, the creditor obtained judgment for £25,300, and issued a bankruptcy notice against the debtor in the name of Mrs. Mary Clark, carrying on business on her own account at the Hotel York, Berners-street. The registrar set the bankruptcy notice aside, at the instance of the debtor, whereon the judgment creditor appealed. Counsel for the appellant contended that on the admitted facts the debtor was carrying on a business. That which occupies a man for the purpose of profit is business: *Smith* v. *Anderson* (15 Ch. D., *per* Jessel, M.R., at p. 258). As to the Act of 1913 being retrospective in effect, the Divisional Court had recently decided in *Re Hollis* (58 SOLICITORS' JOURNAL, 784) that where a judgment was obtained against a woman carrying on a trade or business after the Act came into force, it was available for proceedings against her by bankruptcy notice, although the judgment debt had been incurred before the Act came into force. Counsel for the respondent contended that she had ceased to carry on a trade or business when she sold the Hotel York to a company, and since then had been merely a managing director of companies. The Act of 1913 imposed a new liability upon married women, and therefore ought to be most strictly construed, and not allowed to apply to any debts incurred before the Act came into force.

COZENS-HARDY, M.R.—In this case a bankruptcy notice has been issued against Mrs. Mary Clark, of the York Hotel, Berners-street, carrying on business on her own account at that address. But for section 12 of the Bankruptcy Act, 1913, this could not have been done. The judgment on which the bankruptcy notice is founded was obtained on the 7th of May, 1914, since that Act came into operation. Mrs. Clark has objected that the case does not come within section 12, and that therefore the notice is bad, and the registrar has accepted her view and set the notice aside. The words of section 12 are as follows:—"(1) Every woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a *feme sole*. (2) Where a married woman carries on a trade or business, and a final judgment or order has been obtained against her, whether or not expressed to be payable out of her separate property, for any amount, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice, as though she were personally bound to pay the judgment debt or sum ordered to be paid." The first point taken on behalf of Mrs. Clark on that section is one of general importance, and is that the judgment debt was contracted before the Act came into operation, and that it is against general principles to give a retrospective effect to an Act of Parliament. I am unable to assent to that contention. This Act is a remedial Act, and its language is perfectly plain; it says that every married woman trading "shall be subject to the bankruptcy laws," and that when a judgment has been obtained against her it "shall be available for bankruptcy proceedings against her by bankruptcy notice." I think that the Bankruptcy Act of 1861 throws great light upon this point. That Act was the first which made non-traders liable to bankruptcy proceedings, and it specially provided in section 90 that only a creditor whose debt had been incurred since the Act came into operation could take bankruptcy proceedings against a non-trader. Here the legislature has for the first time made married women subject to the process of bankruptcy notice, and has not reserved to them any rights. I, therefore, think that Mrs. Clark's first point fails, and I note that the Divisional Court decided this point in the same way a few days ago in *Re Hollis* (*supra*). The second point, whether Mrs. Clark was carrying on a trade or business, is not of general importance, but is not an easy question to answer. Originally she carried on the York Hotel herself, in the name of Mrs. Mary Clark, which was not her own name, but one which she had taken under a deed poll. Even after her second marriage she continued to use that name, a course which is intelligible if she wanted a trade name, but extraordinary if she did not. She sold the York Hotel to a company, which we may fairly infer to have been promoted by her, of which she is managing director. Next she started the Berners Hotel, as an addition to the York Hotel, and sold that to a company of which she is again managing director. Then

comes the Endsleigh Palace Hotel, as to which it is only clear that she is managing director, and holds the bulk of the shares. Lastly comes the Princess' Hotel Company, started in June, 1912, in respect of which venture the money now claimed by the judgment creditor was advanced. The prospectus states that Mrs. Mary Clark has acquired the properties needed for transformation into a hotel, and is the vendor thereof to the company. The directors of the company are the same as those of the York Hotel (Limited), with Mrs. Clark as managing director. She contracts to pay the dividend on the preferred shares during the period of construction of the hotel, and the York Hotel (Limited) guarantees that she will pay them. From that prospectus I think it clear that she is the promoter of the Princess' Hotel, and may be said to be carrying on the business of a company promoter dealing in hotels, or, to put it more briefly, as a financier. It has been argued that one isolated transaction does not make a woman a trader. I agree, but subject to the observation that the Princess' Hotel has not been a success, and that Mrs. Clark does not cease to be a trader until the debts incurred in that transaction have been paid. Apart, however, from that, one is bound to have regard to the fact that she certainly promoted the York Hotel, probably the Berners, and possibly the Endsleigh Palace. It is impossible for us to say that she is not carrying on business as a promoter of hotel companies.

SWINFEN EADY, L.J., delivered judgment to the same effect.

PICKFORD, L.J., concurred, adding that it seemed to have been assumed that, unless the debtor could be brought within some well-known category, she could not be said to be carrying on a business; but he doubted that, and thought that, if you found that the debtor was regularly carrying on business transactions, she must be held to be carrying on a business. Appeal allowed.—COUNSEL, *R. E. Moore; Clayton*, K.C., and *E. W. Hansell*. SOLICITORS, *Welch & Co.; Stanley, Evans, & Co.*

[Reported by P. M. FRANCKE, Barrister-at-Law.]

Probate, Divorce, and Admiralty Division.

In the Estate of **MARY HEYS (Deceased). WALKER AND ANOTHER** *v.* **GASKILL AND OTHERS.** Evans, P. 7th April; 6th July.

WILL—MUTUAL WILLS—JOINT TENANCY—LEASEHOLDS—SEVERANCE—WILL REVOCABLE—LATER WILL PRONOUNCED FOR.

An arrangement between husband and wife, joint tenants of leaseholds, to execute mutual wills, and the execution of these wills, severs the joint tenancy in the properties and creates a tenancy in common.

A husband and wife, joint tenants of leaseholds, executed mutual wills in 1907, the arrangement concluded between them being that the wills were to be irrevocable. The husband died in 1911, and his will was proved. In 1912 the wife executed a codicil to her will, and in 1913 she executed a fresh will. These later documents were made by the wife in breach of the arrangement concluded between herself and her husband in 1907.

Held, that that arrangement and the execution of the wills severed the joint tenancy, and created a tenancy in common; and, further, that the will of 1907 was revocable, and that the will of 1913 should be pronounced for as the true last will of the deceased wife.

The plaintiffs, as executors, propounded the last will, dated the 22nd of January, 1913, of Mary Heys, widow, who died on the 10th of May, 1913. The defendants were persons interested under an earlier will, dated the 10th of October, 1907, which they alleged was one of two mutual wills then executed by the deceased and her husband. The husband died on the 20th of October, 1911, and his will was proved, and the deceased, his widow, received benefit thereunder. Evans, P., found as a fact that a codicil of 1912 and the will of 1913 were both in breach of the agreement of 1907 of the deceased with her husband, and intimated that he would consider his decision on the law. *Cur. adv. vult.*

Sir SAMUEL EVANS, P., in the course of his judgment, said: There are three testamentary documents executed by the deceased to be referred to—a will of the 10th of October, 1907, a codicil of the 5th of September, 1912, and a will of the 22nd of January, 1913. All three were duly executed and attested. The plaintiffs, as executors, propound the will of 1913 as the last will and testament of the deceased. The defendants, in various capacities, ask the court to pronounce against that will and the codicil of 1912, and in favour of the will of 1907, as the true last will of the deceased, on the ground that it became irrevocable at the death of the deceased's husband; but in the alternative they claim a declaration that the plaintiffs are trustees for the defendants to the extent of the benefits given to them under the will of 1907, and, as such, hold the property of the deceased in trust for the defendants. The facts are that on the same day, viz., the 10th of October, 1907, Joseph Heys, the husband of the deceased testatrix, and she, his wife, executed separate wills with the same provisions *mutatis mutandis*. The first provision in the husband's will was a devise and bequest of all his estate to his wife absolutely for her own use and benefit if she survived him, but if she predeceased him certain other provisions therein set out were to have effect. Similarly, the first provision in the wife's will was a devise and bequest of all her estate to her husband absolutely for his own use and benefit if he survived her, but if he predeceased her other provisions, similar to those already referred to therein set out, were to have effect. Practically the whole of the estate at the time of the execution of the wills consisted of house property, which the husband and wife held as joint tenants. I am of opinion that the agreement or arrangement made between the husband and wife to execute the two wills, and the execution thereof, severed the joint tenancy, and created a tenancy in common: see *Taylor* v. *Taylor* (11 Ch. D. 267), and *Gould* v. *Kemp* (2 My. & K., p. 309). The two wills of 1907 have been called "mutual wills," and it was contended that, by the covenant or arrangement between the husband and wife, the wife's will of 1907 became irrevocable at the death of the husband, and remained irrevocable thereafter. Apparently a mutual will in the strict sense of the word is a will executed by two or more people, or, what is more accurately called, a joint will: see *Dennyssen* v. *Mostert* (L. R. 4 P. C., p. 258). Such was the will which existed in the case of *Dufaur* v. *Pereira* (1 Dick. 219) and in the case of *Hobson* v. *Blackburn* (1 Add. 274). The term "mutual wills" has been used, and may conveniently be used, to describe documents of a testamentary character made as the result of some agreement or arrangement between husband and wife or other persons; but under our law this court, as a court of probate, knows nothing of what are so described as "mutual wills." The function of this court, as a court of probate, is to ascertain and pronounce what is the last will, or what are the testamentary documents constituting the last will, of a testator which is, or are, entitled to be admitted to probate. In this case, upon the death of the husband, his will of 1907 could be proved by the executors. If the case of *Re Raine* (1 Sw. & Tr. 144) contains any decision to the contrary, I am of opinion that that is no longer the law. On probate of the husband's will, the deceased testatrix would by its terms be entitled absolutely to the whole estate. As to the contention that, upon the death of the husband, the will of the wife (the present testatrix) of the same date became irrevocable, I am of opinion that it lacks any foundation. A will in this country is by its very nature and in its very essence a revocable instrument: see *Lynior's case* (8 Rep. 87 b; Swinb. Pt. vii., section 14, 7th ed., p. 979). [And after referring to *Hobson* v. *Blackburn* (*supra*) and *Dufour* v. *Pereira* (*supra*) the President continued:] The case put forward before me by the defendants is one based upon an alleged contract, which may give rise to certain trusts and remedies. As before stated, if the will of the husband, Joseph Heys, had been proved after his death, during the lifetime of his surviving wife, she would have a complete legal title to all his estate. She might have disposed of it in law, although remedies might have been pursued against her for damages. There is no doubt but that damages can be recovered for breach of a covenant not to revoke a will: see *Robinson* v. *Ommaney* (23 Ch. D. 285) and *Re Parkin* (1892, 3 Ch. 510). If the wife had not revoked her mutual will of 1907 by the later will, but had married, that in itself would have caused a revocation of her will. I am clearly of opinion that the deceased's will of 1907 was revocable, and I must therefore pronounce in favour of the will of the 22nd of January, 1913, as the true last will of the deceased testatrix, Mary Heys. But in the event of my pronouncing in favour of the deceased's will of 1913, and admitting it to probate, I was asked, in the alternative, to make a declaration that the plaintiffs are trustees for the defendants to the extent of the benefits given to them under the deceased's will of the 10th of October, 1907, and as such hold the property of the deceased in trust for the defendants. No doubt theoretically this court, as a court of one of the divisions of the High Court of Justice, under the Judicature Act, can, and ought to, but only where it can conveniently and properly do so, decide all matters in controversy in any action between the parties to the action: see *Thorp* v. *Macdonald* (3 P. D. 76). But this court is in practice a court of probate, and not of construction. It should, generally speaking, only construe testamentary documents in so far as it is necessary to decide what testamentary documents should be admitted to probate. But I am asked to advance from the region of testamentry dispositions into that of contract and trusts, and to declare certain trusts upon the footing of contract. Contracts and trusts are beyond and outside my jurisdiction in probate matters. Even if I ventured to declare any trusts they would have to be administered in the Chancery Division and not in this. If I presumed to pronounce upon any contract, or to make a declaration upon any trusts, in this case, I am not satisfied that I have all the necessary parties before me, and I have no knowledge of the state of the assets. What I am asked to do appertains specially to proceedings of the character expressly assigned to the Chancery Division by section 34 of the Judicature Act, 1873. In my opinion I cannot accede to the prayer of the alternative claim of the defendants, and I must leave them to pursue their remedies in the other division. I therefore limit my judgment to a pronouncement in favour of the will of the 22nd of January, 1913, as the true last will of the deceased testatrix. The costs of all parties to be paid out of the estate.—COUNSEL, for the plaintiffs, *R. M. Middleton*; for the defendants (minors), *R. V. Le Bas*; for the other defen-

dants, *W. O. Willis*. SOLICITORS, for the plaintiffs, *Ayrton, Biscoe, & Co.*, for *Alfred Grundy & Co.*, Manchester; for the defendants (minors), *Davenport, Cunliffe, & Blake*, for *Richard Stott & Son*, Rochdale; for the other defendants, *White & Leonard*, for *Hartley & Son*, Rochdale.

[Reported by C. P. HAWKES, Barrister-at-Law.]

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 30th October contains the following:—

1. A Proclamation, dated 29th October (printed below), revising the List of Contraband of War. The Proclamations of 4th August and 21st September (58 SOLICITORS' JOURNAL, pp. 770, 839) are withdrawn, and new lists of absolute and conditional contraband issued.
2. An Order in Council, dated 29th October (printed below) repealing the Order of 20th August, 1914 (58 SOLICITORS' JOURNAL, p. 799), relating to the Declaration of London, and adopting the Declaration with further modifications.
3. A Notice, dated 27th October (printed below), as to protection of money of British subjects in Austrian and Hungarian banks.

The *London Gazette* of the 3rd inst. contains the following:—

4. A Notice, dated 31st October (printed below), relating to British merchant ships and Austro-Hungarian ships of war.
5. A Notice, dated 1st inst. (printed below), as to enemy reservists on neutral vessels.

A Proclamation Revising the List of Contraband of War.

GEORGE, R.I.

Whereas on 4th August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

Whereas on 12th August, 1914, We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

Whereas on 21st day of September, 1914, We did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas it is expedient to consolidate the said lists and to make certain additions thereto:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamations of 4th August and 21st September aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until We do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schdule II hereto will be treated as conditional contraband.

SCHEDULE I.

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Sulphuric acid.
5. Gun mountings, limber boxes, limbers, military wagons, field forges and their distinctive component parts.
6. Range-finders and their distinctive component parts.
7. Clothing and equipment of a distinctively military character.
8. Saddle, draught, and pack animals suitable for use in war.
9. All kinds of harness of a distinctively military character.
10. Articles of camp equipment and their distinctive component parts.
11. Armour plates.
12. Hæmatite iron ore and hæmatite pig iron.
13. Iron Pyrites.
14. Nickel ore and nickel.
15. Ferrochrome and chrome ore.
16. Copper, unwrought.
17. Lead, pig, sheet, or pipe.
18. Aluminium.
19. Ferro-silica.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.
22. Aeroplanes, airships, balloons, and air-craft of all kinds, and their component parts, together with accessories and articles recognisable as intended for use in connection with balloons and aircraft.
23. Motor vehicles of all kinds, and their component parts.
24. Motor tyres; rubber.
25. Mineral oils and motor spirit, except lubricating oils.
26. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

SCHEDULE II.

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Sulphur.
11. Glycerine.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.
14. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
15. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Dated 29th October.

Order in Council Adopting the Declaration of London, with Modifications.

Whereas by an Order in Council dated 20th August, 1914, His Majesty was pleased to declare that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force by His Majesty's Government; and

Whereas the said additions and modifications were rendered necessary by the special conditions of the present war; and

Whereas it is desirable and possible now to re-enact the said Order in Council with amendments in order to minimise, so far as possible, the interference with innocent neutral trade occasioned by the war:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:—

1. During the present hostilities the provisions of the Convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and non-contraband, and to the modifications hereinafter set out, be adopted and put in force by His Majesty's Government.

The modifications are as follows:—

(i.) A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shewn on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.

(ii.) The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy State.

(iii.) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned "the order," or if the ship's papers do not shew who is the consignee of the goods, or if they shew a consignee of the goods in territory belonging to or occupied by the enemy.

(iv.) In the cases covered by the preceding paragraph (iii.) it shall lie upon the owners of the goods to prove that their destination was innocent.

2. Where it is shewn to the satisfaction of one of His Majesty's Principal Secretaries of State that the enemy Government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country, Article 35 of the said Declaration shall not apply. Such direction shall be notified in the "London Gazette," and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture.

3. The Order in Council of 20th August, 1914, directing the adoption and enforcement during the present hostilities of the Convention known as the Declaration of London, subject to the additions and modifications therein specified, is hereby repealed.

4. This Order may be cited as "the Declaration of London Order in Council, No. 2. 1914."

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers, and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

Dated 29th October.

Money on Deposit in Austrian Banks.

Foreign Office, October 27th, 1914.

The Secretary of State for Foreign Affairs has received a note from the United States Ambassador stating that, according to information furnished to the United States Government by their Ambassador at Vienna, the Austro-Hungarian Government will grant protection to money belonging to British subjects lying in Austrian and Hungarian Banks until the conclusion of peace, on the basis of reciprocity.

British Merchant Ships and Austrian War Ships.

The Secretary of State for Foreign Affairs has received information to satisfy him that British merchant ships, which cleared from their last port of departure before the outbreak of hostilities with Austria-Hungary, but have been, or may be, met with at sea by Austro-Hungarian ships of war after the outbreak of such hostilities, are to be detained during the war, or requisitioned in lieu of condemnation as prize, and he has accordingly addressed the undermentioned notification to the Lords Commissioners of the Admiralty.

Foreign Office, October 31, 1914.

Sir Edward Grey to the Lords Commissioners of the Admiralty.

Foreign Office, October 31, 1914.

My Lords,

I have the honour to state that information has reached me of a nature to satisfy me that British merchant ships, which cleared from their last port before the outbreak of hostilities with Austria-Hungary, but have been, or may be, met with at sea by Austro-Hungarian ships of war after the outbreak of such hostilities, are to be detained during the war, or requisitioned in lieu of condemnation as prize.

Austro-Hungarian merchant vessels therefore, which cleared from their last port before the declaration of war, and are captured after the outbreak of hostilities with Austria-Hungary and brought before British Prize Courts for adjudication, will be detained during the war, or requisitioned subject to indemnity. I have, etc.,

E. GREY.

Arrest of Enemy Reservists.

Foreign Office, November 1, 1914.

In view of the action taken by the German forces in Belgium and France of removing, as prisoners of war, all persons who are liable to military service, His Majesty's Government have given instructions that all enemy reservists on board neutral vessels should be made prisoners of war.

National Insurance Act, 1911.

(1 & 2 Geo. V., ch. 55.)

Notice is hereby given, under the Rules Publication Act, 1893, that it is proposed by the National Health Insurance Joint Committee, after the expiration of at least 40 days from this date, in pursuance of the powers conferred upon them by sections 35 and 65 of the National Insurance Act, 1911, and by the National Insurance (Joint Committee) Regulations, 1912 and 1913, to make new regulations as to the Accounts and Administration Expenses of Approved Societies, and by such regulations to revoke the National Health Insurance (Accounts of Approved Societies) Regulations, 1912, and the National Health Insurance (Societies' Administration Expenses) Regulations, 1913.

Copies of the draft regulations can be purchased, either directly or through any bookseller, from Messrs. Wyman & Sons (Limited), 29, Breams Buildings, London, E.C., and 54, St. Mary Street, Cardiff; or Clerk-in-Charge, Publications Department, H.M. Stationery Office, 23, Forth Street, Edinburgh; or Messrs. E. Ponsonby (Limited), 116, Grafton Street, Dublin.

Dated this 30th day of October, 1914.

National Health Insurance Joint Committee,
Buckingham Gate, London, S.W.

Societies.

Lincoln's-inn.

The Council of Lincoln's-inn has ordered that Belgian and French Judges and avocats in England during their stay may use the library and refreshment room of the inn; that the Common Room Committee be recommended to extend the like privilege to the common room of the inn; that any Belgian or French Judge or avocat must be introduced by a member of the inn of not less than five years' standing.

The Union Society of London.

The opening meeting of the 1914-1915 Session was held at the chambers of Mr. W. R. Willson, 3, Plowden-buildings, Temple, on Wednesday evening. The president, Mr. Harry Geen, being in the chair. It was decided to continue the meetings of the society at the above address for the present. The motion before the house was: "That the treatment of alien enemies in this country is not sufficiently drastic." The follow-

ing gentlemen spoke; Messrs. Kingham, Gallop, Coram, Edmunds, Baker, Willson, Coley, Morden and Quass. The motion was lost. The subject for next week is: "That International Peace is not Possible."

United Law Society.

A meeting of the above society was held on Monday, 2nd November, at 3, King's Bench-walk, Temple, E.C. Mr. Thomas Hynes moved: "That the case of *Morison* v. *London County and Westminster Bank (Limited)* (1914, 3 K. B. 356), was wrongly decided. Mr. N. H. Aaron opposed. The following gentlemen also spoke: Messrs. C. R. Morden, C. P. Blackwell, and E. S. Cox-Sinclair. The motion was lost by 5 votes.

Solicitors' Red Cross Fund.

The appeal issued by Sir Charles Longmore, K.C.B., President of the Law Society, to the solicitors of England and Wales to assist the British Red Cross Society by subscribing to a fund for the help of the wounded, has met with a very generous response, and over £2,500 has been already subscribed.

Would any solicitors who have not yet sent in their subscriptions kindly do so as soon as possible, as we believe the fund will be closed at the end of next week?

Cheques should be made payable to the "Solicitors' Red Cross Fund," and should be sent to the President of the Law Society, Law Society's Hall, Chancery-lane, London, W.C.

Belgian Refugee Lawyers.

Among the large body of Belgian refugees who responded to the national invitation to become the guests of this country, pending the redemption of their own land, are a considerable number of Belgian judges, magistrates, avocats, notaires, and other members of the legal profession. With a view to ameliorating as far as possible the unhappy condition of these lawyers, and to organise the offers of hospitality and assistance of which many of them stand in urgent need, the United Law Society, which, as many of our readers know, was founded in 1864, and has for its leading object the promotion of the interests of both branches of the legal profession, has elected a committee consisting of the following gentlemen:—Barristers-at-law: Messrs. Edward S. Cox-Sinclair (chairman), Sidney Ashley, C. P. Blackwell (secretary), Thos. Hynes and T. Jameson. Solicitors: Messrs. J. R. Yates (vice-chairman), N. H. Aaron, James Ball and Guedalla (treasurer).

This committee has taken over the work of a small body of lawyers, who, under the chairmanship of Mr. Cox-Sinclair, had already been able to render help to their Belgian *confrères* in more urgent cases. The Bar Council, as well as the four Inns of Court, readily responded to appeals made to them, and much was done in an informal way to utilise the offers of help which were received from all parts of the country.

The United Law Society's committee have now made arrangements to carry on and extend the work which has been so successfully initiated. They feel sure that among the members of the legal profession in this country there must be many who would be glad to render assistance in such a form as may be practicable to alleviate the needs of their unfortunate Belgian *confrères*. If so, they would be glad to receive any offers of such hospitality, &c., for homeless lawyer refugees, which may be addressed for the committee to Mr. Sidney Ashley, Barrister-at-Law, 57, Broad-street, Bloomsbury, London, W.C.

Law Students' Journal.

Law Students' Societies.

University of London Inter-Collegiate Law Students' Society.—At a meeting held on Tuesday, 3rd November, 1914, at University College (Mr. R. F. Levy in the chair), the subject for debate was:—"That judgment be given to the plaintiff in the following circumstances: Canon Creed, a distinguished cleric, runs with his boat during the Eights, and is photographed by Snapper, without his knowledge, while in the act of brandishing a rattle. Snapper sells the negative to Harmson, the proprietor of an anti-clerical paper. A reproduction of the portrait is published with the legend, 'A dignitary of the Church.' Canon Creed claims damages and an injunction." Mr. E. M. Duke opened in the affirmative, and Mr. H. P. Wells in the negative. The following members also spoke: Messrs. G. R. Blake, F. Bradbury, P. A. Wood, O. W. Godwin, and R. H. Gregorowski. The leaders having replied, the chairman summed up, and on the motion being put to the meeting, it was carried by six votes to four.

The Law Society.

The annual general meeting of the Students' Rooms will be held at the Society's Hall, at 6 p.m., on Monday evening, immediately at the close of the first lecture of the new term. The President of the Society has announced his intention of taking the chair, and representatives of the solicitor and articled clerk members will be elected to the Committee for the year 1914-15. All articled clerks are welcome at the meeting, but only members of the Rooms have votes for the election of representatives. Readers are reminded that the first of the lectures in the special course on "The Effect of War on Contracts and Trade," particulars of which were given in last week's issue, will be delivered on Wednesday next, at 5.30, at the Society's Hall.

Obituary.

Mr. Arthur Cohen, K.C.

Mr. Arthur Cohen, K.C., died on the 3rd inst. at his residence in Great Cumberland-place, in his eighty-fourth year. He had been in failing health for the last month.

Arthur Cohen, says the *Times*, might not unreasonably have been regarded as the *doyen* of the English bar. If we had in England an elected head of the profession like the Dean of Faculty in Scotland, there can be little doubt that Cohen would years ago have been chosen for the dignity. An unofficial recognition of merit of limited application, however, is that of standing counsel to one or other of the two ancient Universities, and Cohen had held the post of University counsel for Cambridge since 1879. All members of the profession will agree that for many years past his proper place would have been that of a member of the highest tribunals in the land. He was fit to be classed with two other men of his faith, contemporaries but senior to himself, Jessel and Benjamin.

The son of Benjamin Cohen, a member of a distinguished Jewish family to which Sir Moses Montefiore belonged, Cohen was born on 18th November, 1830. Educated at University College, London, he had some difficulty in entering at Cambridge, as three colleges declined to admit a Jew. At length, however, by the intervention of an Anglican dignitary, he matriculated at Magdalene, and graduated as Fifth Wrangler in 1853. Although excluded from a Fellowship, Cohen had for many years been an honorary Fellow. He was called to the bar by the Inner Temple in November, 1857, winning a scholarship, and soon rose into practice, mainly in commercial and Admiralty cases. His appointment as junior counsel to Sir Roundell Palmer at the Geneva Arbitration on the Alabama claims in 1872 seemed to mark him for promotion; but Cohen was the reverse of a self-seeker, and he remained at the bar till the end. He took silk in 1874, and soon rose to substantial practice within the bar, and frequently appeared both in the Privy Council and the House of Lords. In manner and bearing he was a grand seigneur; his utterance was smooth and persuasive, though he spoke with somewhat of a drawl, and it was difficult not to be carried away, for the moment, by the most fallacious argument if in his mouth.

In 1880 he was returned for Southwark with Thorold Rogers, but retired from Parliament in 1886. Soon after his first election he was offered a judgeship by Lord Selborne, but Southwark had shewn itself a fickle constituency, and to oblige his party Cohen declined. It is more than singular that during Mr. Gladstone's Government the offer was not renewed. Room might well have been found for him in the Court of Appeal. The most notable appeal in which Cohen was engaged was that of *Allen* v. *Flood*, the famous trade union case. He was counsel in the Venezuela Arbitration at The Hague, judge of the Cinque Ports, a member of the Royal Commissions on Unseaworthy Ships and on Trade Unions, chairman of the Royal Commission on Shipping Rings, a member of the Senate of the University of London, and a member of the British Academy. He was created a Privy Councillor in 1905. He leaves a son at the bar.

Mr. T. H. Fischer, K.C.

Mr. Thomas Halhed Fischer, K.C., the Senior Master in Lunacy, the senior King's Counsel, and (with the exception only of the King and Sir Edward Fry) the senior bencher of Lincoln's-inn, died on Sunday at his residence in Bedford Park.

Mr. Fischer was born in 1830, and educated at Merchant Taylors' School. He was admitted as a student of Lincoln's-inn in 1845, and was called to the bar in 1851. He soon acquired a considerable practice. In 1872 he took silk at the same time as Lord Lindley, Lord Herschell, Lord Russell, and Mr. Justice Day. He became a bencher of his inn the same year, and was subsequently Examiner in the Law of Real and Personal Property and Professor of Equity to the Inns of Court.

In 1896 Mr. Fischer received the appointment of a Mastership in Lunacy, vacated by the late Sir Francis Maclean on becoming Chief Justice of Bengal. During his long tenure of the mastership he was successful in introducing and maintaining in his own branch of the work of the office many much-needed reforms, and in establishing a method of uniformity of practice which had long been wanted for the work of the department, especially since its growth under the Lunacy Act, 1891. He was always jealously opposed to any encroachments on what he considered to be the proper jurisdiction of a Master in Lunacy and the absorption of the work of his own office in that of the Chancery Division.

Mr. Fischer married, in 1852, Agnes Adamina, third daughter of Major-General Hogg, of Wimbledon, Surrey. Two sons and two daughters survive him.

At the Mart, on Wednesday last, Messrs. Edwin Fox & Burnett & Baddeley offered by auction several properties, also some lots of shares. There was a good attendance and all the lots were realised.

Legal News.

Appointments.

Several changes in the sittings of the magistrates of the metropolitan police courts have taken place consequent upon the death of Mr. A. C. Plowden. Mr. Plowden is succeeded at Marylebone by Mr. E. W. Garrett, of the West London Police Court, whose place is taken by the Hon. John de Grey, from Lambeth. Mr. Chester Jones goes from Old-street to Lambeth, and Mr. Wilberforce from the Thames Police Court to Old-street. Mr. H. L. Cancellor, the magistrate last appointed, who has been sitting temporarily at Marylebone, will in future sit at the Thames Court.

Mr. J. Lewis Phillips, of Llanelly, has been appointed Clerk and Solicitor to the Burry Port Urban District Council in succession to the late Mr. W. Howell. Mr. Phillips was admitted a solicitor in 1898, and a notary in 1910.

Mr. John Percival Ward, a member of the firm of Toulmin, Ward & Co., of 41, North John-street, Liverpool, has been appointed a Commissioner for Oaths. He was admitted in 1907.

Changes in Partnerships.

Dissolutions.

Frank Faithfull and Frederick William Davy, solicitors (Faithfull & Davy), Old Bank House, 105, High-street, in the city of Winchester, and at Norfolk House, Norfolk-street, Strand. January 1. The said Frank Faithfull will continue to carry on business at Winchester aforesaid under the said style of Faithfull & Davy. The said Frederick William Davy will carry on business in London in partnership with another, at 11, Henrietta-street, Cavendish-square, in the county of London, under the style or firm of Marsden, Burnett, Faithfull, & Davy.

Maxwell De la Combe and John Frederick Walter Wheeler, solicitors (Rook & De la Combe, at Westerham, and De la Combe & Wheeler, at Oxted), Westerham, in the county of Kent, and Oxted, in the county of Surrey. September 29. The said Maxwell De la Combe will continue to carry on the said practice at Westerham aforesaid under the style or firm of Rooke & De la Combe, and the said John Frederick Walter Wheeler will continue to carry on the said practice at Oxted aforesaid in his own name only.

[*Gazette*, October 30.

John Edward Dell and Arthur Cecil Box, solicitors (J. E. Dell & Box), 22, Regency-square, in the county borough of Brighton, at Southwick, and at Shoreham-by-Sea, both in the county of Sussex. October 31. The said John Dell will continue to carry on business at the said addresses under his own name. [*Gazette*, November 3.

General.

Judge Rentoul, K.C., announced on Tuesday, in the City of London Court, that while the war lasted he would make no committal order under a judgment summons at the instance of any plaintiff.

The Streets Committee of the Corporation of the City of London have requested the corporation forthwith to ask the Government to obtain power for the determination of contracts with companies for the supply of goods imported from any country with which this country is at war, or manufactured, or partly manufactured, in any such hostile country, and for the determination of contracts with companies which are, or were, on and subsequently to 1st January, 1914, under the management of, or a majority of whose directors or shareholders are or were, during that period, born subjects of any such hostile countries.

The compulsory registration, within one month, says *Reuter*, of all aliens in Canada of enemy nationality is provided for in an Order in Council passed at Ottawa, on the 28th ult. The object is in no spirit of hostility to the great body of Germans and Austrians resident in Canada, but applies only to those whose presence may constitute a menace to the community.

In reply to a communication from the Liverpool Chamber of Commerce asking what steps the Government propose to take to assist traders in this country who are at present unable to recover debts from foreign countries owing to the war, the Treasury state that the question whether assistance can be given in any form to firms unable to recover debts from the Continent is receiving consideration of his Majesty's Government.

A consultation has been held between the Commissioner of Police, Alderman Edward Johnson, chairman of the board of Licensed Victuallers' Central Protection Society, and Mr. Frank P. Whitbread representing the London Brewers' Council, and it has been agreed that all licensees within the Metropolitan Police District shall be asked on and from Monday next not to serve women with intoxicating liquors for consumption either on or off the premises before 11.30 in the forenoon. The Central Board is communicating with all licensees inviting their loyal co-operation in the matter. An example of the extent to which the evil of drinking prevails among women was given yesterday at the Thames Police Court, where out of twenty-eight charges more than half were against women for drunkenness.

In the London Sheriff's Court, on Monday, a special jury awarded Mr. Charles Meeson, of Cornwall-parade, Church End, Finchley, £100 compensation against the London and North-Western Railway Company for anticipatory depreciation in the letting value of a house of which he is lessee in Adelaide-road, Kilburn, by reason of the construction of what is to be the largest tube railway in London. The claimant claimed that the company should purchase the property, or, in the alternative, pay the value of the easement. Two tunnels, it was stated, are to be constructed 53 feet below the surface, and under the claimant's house and garden. The Railway Company's Act prescribed that where the tube was carried at a greater depth than 40 feet, a jury should decide what damage, if any, was done.

The Bishop of Willesden presided, on Monday, at a meeting of the London Diocesan Police Court Mission in Kensington Town Hall. The Rev. R. F. Rendell, the secretary, reported that during the year 5,000 cases had been dealt with at the request of the magistrates and great benefit bestowed on men, women and children. Mr. Robert Wallace, K.C., chairman of the London Sessions, said that no one should be sent to prison if, consistently with the interests of society, he could possibly be kept out of it. There had been a great change in the methods of dealing with crime. One-half of the indictable cases to which the Probation Act was applied came to the London Sessions, and since the Act was adopted five years ago 90 per cent. of those bound over never returned, while the numbers of trials had fallen 30 per cent.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	EMERGENCY ROTA.	APPEAL COURT No. 1	Mr. Justice JOYCE.	Mr. Justice WARRINGTON
Monday Nov. 9	Mr. Synge	Mr. Goldschmidt	Mr. Church	Mr. Farmer
Tuesday 10	Church	Borrer	Farmer	Synge
Wednesday .. 11	Farmer	Leach	Goldschmidt	Bloxam
Thursday 12	Bloxam	Church	Leach	Goldschmidt
Friday 13	Greswell	Synge	Borrer	Leach
Saturday 14	Jolly	Farmer	Greswell	Church

Date.	Mr. Justice NEVILLE.	Mr. Justice EVE.	Mr. Justice SARGANT.	Mr. Justice ASTBURY.
Monday Nov. 9	Mr. Jolly	Mr. Leach	Mr. Borrer	Mr. Bloxam
Tuesday 10	Greswell	Goldschmidt	Leach	Jolly
Wednesday .. 11	Borrer	Church	Greswell	Synge
Thursday 12	Synge	Greswell	Jolly	Farmer
Friday 13	Farmer	Jolly	Bloxam	Church
Saturday 14	Bloxam	Borrer	Synge	Goldschmidt

The Property Mart.

Forthcoming Auction Sales.

November 12.—Messrs. C. C. & T. MOORE, at the Mart, at 2.30: Freehold and Leasehold Properties (see advertisement, page ix., October 24).

November 19.—Messrs. MILLAR, SON & Co., at the Westminster Palace Hotel, S.W.: Stocks and Shares (see advertisement, page ix., October 24).

Result of Sale.

REVERSIONS, LIFE POLICIES, SHARES, &C.

Messrs. H. E FOSTER & CRANFIELD held their usual Periodical Sale of these interests at the Mart, Tokenhouse-yard, E.C., on Thursday last, when the following lots were sold at the prices mentioned:—

ABSOLUTE REVERSION to £2,000	Sold	£980
TWO ANNUITIES of £25 each	"	£185
ABSOLUTE REVERSION to about £1,900	"	£400

Winding-up Notices.

JOINT STOCK COMPANIES

LIMITED IN CHANCERY.

London Gazette—FRIDAY, Oct. 30.

WILLIAM WIBBY, LTD.—Creditors are required, on or before Nov. 30, to send in their names and addresses, and the particulars of their debts or claims, to Mr. Frederick William Smith, New Inn chambrs, King st, Gloucester, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette—FRIDAY, Oct. 30.

Innovation Ingenuities, Ltd.
Irwin Blackham & Co, Ltd.
Sidney Wise and Brightman, Ltd.
Blakes Wheat Co, Ltd.
Crouch Motors, Ltd.
Aerated Dough Machine (Foreign) Co, Ltd.
Sidcup and District Cinema, Ltd.
Deutsons (Blackpool) Ltd.
Peppercorn & Co, Ltd.
West Fjord Iron Ore Co, Ltd.
Marine and Engineering Contract Co, Ltd.
Orwell Joinery Co, Ltd.
Ensayo Co, Ltd.
Oil Enterprise Syndicate, Ltd.
Pure Ice Cream Supply Co, Ltd.
Lamb et Brothers (Lowestoft), Ltd.
Hull Fish Manure and Oil Co, Ltd.
Stellar Signs, Ltd.

Creditors' Notices.

Under Estates in Chancery.

LAST DAY OF CLAIM.

London Gazette—FRIDAY, Oct. 23.

BROUGHTON, WELDON THOMAS JOHN, Newdigate, Surrey, Land Agent Nov 30 Brougton v Macro, Warrington and Sargant, JJ. Malkin, The Rectory House, Martin's la.
LANCASTER, WILLIAM, Darlington, Durham Dec 1 Lancaster v Lancaster, Neville, J. Baitey, Darlington
LACY, CHARLES EDWARD, Lower Belgrave st Nov 25 Sweetnam and Another v O'Shea and Another, Joyce, J. Ramsden, Moorgate Station chmbrs.

London Gazette.—TUESDAY, Oct. 27.

WIGGIN, EDWIN RICE, Cheltenham Nov 27 Inch v Williams, Warrington, J Barber St. He ens pl

London Gazette—TUESDAY, Nov. 3.

ELEIS, SIR JOHN WHITTAKER, Broxbourne, Herts Dec 2 Prideaux and Another v Elis and Others, Astbury, J. Prideaux, Goldsmiths' Hall.

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, Oct. 30.

ADKINS, THOMAS HENRY, Bournemouth Dec 4 Ashurst & Co, Throgmorton av
BARKER, General Sir GEORGE DIGBY, GCB, Clare, Suffolk Nov 30 Elwes & Miller, Essex st,
BLOWER, HENRY, Shrewsbury Dec 6 Popple, Great St Thomas Apostle
BROWN, ANN, Cirencester Dec 7 Steel & Co, Cheltenham
COTTERELL, ALFRED HENRY, Charlton Nov 30 Duke & Son, Ironmonger la
DIXON, MARY ANN, Blackpool Nov 26 Kay, Blackpool
GRAVES, ELIZABETH, Hove, Sussex Dec 1 Cockburn & Co, Hove
HADLOW, WILLIAM FRANCIS, Dover, Plumber Dec 5 Lewis & Pain, Dover
HARDY, ANNE MARIA, Edgbaston, Birmingham Dec 12 Locker, Birmingham
HARPHAM, GEORGE, Sen, Jackdale, Nottingham Nov 30 Searby, Alfreton
HARRISON, WILLIAM, Manchester Nov 30 Gouldy & Goodfellow, Manchester
HART, JESSICA, Coventry Nov 30 Rotherham, Coventry
HEALEY, WILLIAM, Southport Nov 28 Richardson, Bishopsgate
HOLROYD, SARAH JANE MARY, Leeds Nov 17 Simpson & Curtis, Leeds
HORSMAN, TOM, Dacre, Yorks, Farmer Nov 26 Kirby & Co, Harrogate
HOWSE, Sir HENRY GREENWAY, Cudham, Kent Dec 31 Janson & Co, College hill
JACKSON, MARGARET, Selby, Yorks Nov 25 Bantoft, Selby
JENNISON, CHARLES, Manchester Nov 30 Lord, Manchester
LAYTON, JOHN, Robertsbridge, Sussex Dec 5 Dowson & Co, Surrey st
LYDE, EDITH ELIZA AMES, Thornham, Norfolk Dec 31 A & H White, Great Marlborough st
MANSEL, EMILY, Harbledown, Canterbury Nov 30 Hussey & Master, Stone bldgs
MARKS, Moss, Fellows rd, Hampstead Dec 12 Russell & Arnholz, Great Winchester st
MILNES, ALICE BERNOUVILLE, Lincoln Dec 1 Richardson & Co, St James's st
MOORE, FRANCES, Hyde, Chester Dec 10 Dinkwater, Hyde
RALPH, HENRIETTA, Truro Nov 30 Hancock, Truro
REYNER, ALICE, Epsom, Surrey Nov 30 Charles Lord, Manchester
ROWLATT, FREDERICK WILLIAM, Surbiton, Surrey Nov 30 Torr & Co, Bedford row
ROWLAND, WILLIAM RICHARD, Fenny Stratford, Bucks Dec 8 Sanders, Lincoln's Inn fields
SHEPHERDSON, WILLIAM THORNEY, Sheffield, Solicitor's Clerk Nov 30 H. & A. Maxfield Sheffield
SHERLAW, ADAM Willow Bridge, Scotland gate, Northumberland, Brick Manufacturer Nov 26 Bainbridge, Newcastle upon Tyne
SIMMONS, LANCE TAPLEY, Watford, Herts Dec 1 Camp & Co, Watford
SMART, DAVID, The Gardens, Peckham Rye, Ironmonger Nov 30 Ward & Co, 85, Gracechurch st
SMITH, SIR CHARLES GARDEN ASSHETON, Vaynol, Carnarvon Dec 1 Hastie, Lincoln's inn fields
SMITH, WILLIAM ARTHUR, Edgbaston, Birmingham Nov 30 Lee & Co, Birmingham
WADE, JOSEPH, Bowling, Bradford Dec 31 Hutchinson & Sons, Bradford
WATKINS, JOHN THOMAS, Brighton Nov 30 Harker & Co, Brighton

Bankruptcy Notices.

London Gazette.—FRIDAY, Oct. 30.

RECEIVING ORDERS.

BLENKINSOPP, THOMAS BRACK, Newbottle, Durham, Joiner Durham Pet Oct 27 Ord Oct 27
DEXTER, ALFRED, Knossington, Leicester, Grocer Leicester Pet Oct 28 Ord Oct 28
ENGLAND, WILLIAM JOHN, Okehampton, Devon, Licensed Victualler Plymouth Pet Oct 26 Ord Oct 26
EVANS, GEORGE HAMBLETT, Sutton Coldfield, Warwick, Butcher Birmingham Pet Oct 28 Ord Oct 28
FARMER, THOMAS, Pontycymmer, Glam, Fruiterer Cardiff Pet Oct 27 Ord Oct 27
FERLY, JOSEPH, Birmingham, Provision Merchant Birmingham Pet Oct 6 Ord Oct 27
GOODWIN, HERBERT, Colchester, Cycle Agent Colchester Pet Oct 27 Ord Oct 27
HARGREAVES, ALFRED WILLIAM, Read, Lancs, Butcher Burnley Pet Oct 27 Ord Oct 27
HOAD, BURTON CHARLES, and GEORGE ROBERT BISHOP, Maidstone, Lime Burners Maidstone Pet Oct 26 Ord Oct 26
JONES, JOHN, Wrexham, Tailor Wrexham Pet Oct 17 Ord Oct 28
LOCK, HERBERT WILLIAM, Leverington, Cambridge, Fruit Grower King's Lynn Pet Oct 23 Ord Oct 26
OSBORNE, HERBERT COVENTRY BASSET, Whyteleafe, Surrey High Court Pet Oct 27 Ord Oct 27
PAWSON, GEORGE HERBERT, Patrington, Yorks, Butcher Kingston upon Hull Pet Oct 27 Ord Oct 27
RANSON, JOHN, Ringwood, Hants, Baker Salisbury Pet Oct 27 Ord Oct 27
SIMM, THOMAS, Swansea, Metal Merchant Swansea Pet Oct 16 Ord Oct 26
SMITH, WILLIAM JOHN, St George, Bristol, Tailor Bristol Pet Oct 26 Ord Oct 26
STEVENS, REGINALD, Sheffield, Commercial Traveller Sheffield Pet Oct 28 Ord Oct 28
STREDWICK, FANNY KATE, Hellingly, Sussex Lewes Pet Oct 28 Ord Oct 28
WALKER, JOHN, Bolton, Botanical Brewer Bolton Pet Oct 26 Ord Oct 26
WOOD, GEORGE, SAMUEL WOOD, and HARRY WOOD, Oldbury, Worcester, Brick Manufacturers West Bromwich Pet Oct 26 Ord Oct 26
WRAGG, DAVID DAVY, Dronfield, Derby, Cutlery Manufacturer Chesterfield Pet Oct. 27 Ord Oct 27

FIRST MEETINGS.

AIREY, WILLIAM, Abergavenny, Mon, Engineer Nov 6 at 11 Off Rec, 144, Commercial st, Newport, Mon
CONLAN, MARTIN, Wrexham, Hotel Keeper Nov 7 at 12 Crypt chmbrs, Chester
COURT, WILLIAM, Lynsted, Kent, Wine Merchant Nov 6 at 11.15 Off Rec, 68A, Castle st, Canterbury
CRESSEY, HERBERT, Margate, Solicitor Nov 6 at 10.30 Off Rec, 68A, Castle st, Canterbury
CULLUM, ROBERT JOHN, Gayton, Norfolk, Carter Nov 7 at 12.30 Off Rec, 8, King st, Norwich
DEXTER, ALFRED, Knossington, Leicester, Grocer Nov 6 at 3 Off Rec, 1, Berridge st, Leicester
FIELD, ELYSTAN HAMILTON, Langley, Bucks, Laundry Proprietor Nov 9 at 11 14, Bedford row
FREEMAN, FRED WILLIAM, Sexton Delaval, Northumberland Nov 10 at 11 Off Rec, 30, Mosley st, Newcastle upon Tyne
GREEN, ARTHUR CECIL, Tadworth, Surrey, Architect Nov 9 at 12.30 132, York rd, Westminster Bridge rd
GOODWIN, HERBERT, Colchester, Cycle Agent Nov 11 at 2.30 Off Rec, 36, Princes st, Ipswich
HILDON, ROBERT, Thornaby on Tees, Blacksmith Nov 10 at 11.30 Off Rec, Court chmbrs, Albert rd, Middlesbrough
HOAD, BURTON CHARLES, and GEORGE ROBERT BISHOP, Maidstone, Lime Burners Nov 9 at 11 9, King st, Maidstone
JOHNSON, JOSEPH MELBOURNE, Upton on Severn, Worcester, Chemist Nov 6 at 11.30 Off Rec, 11, Copenhagen st, Worcester
LARDER, JOHN, Witherness, Butcher Nov 10 at 11 Off Rec, York City Bank chmbrs, Lowgate, Hull
OSBORNE, HERBERT COVENTRY BASSET, Whyteleafe, Surrey Nov 9 at 12 Bankruptcy bldgs, Carey st
PAWSON, GEORGE HERBERT, Patrington, Yorks, Butcher Nov 10 at 12 Off Rec, York City Bank chmbrs, Lowgate, Hull
RANSON, JOHN, Ringwood, Hants, Baker Nov 10 at 12.30 Off Rec, City chmbrs, Catherine st, Salisbury
SIBLEY, PERCY, Newport, Mon, Newsagent Nov 10 at 11 Off Rec, 144, Commercial st, Newport, Mon
SIMM, THOMAS, Swansea, Metal Merchant Nov 10 at 12 Off Rec, Government bldgs, St Mary's st, Swansea
WALKER, JOHN, Bolton, Botanical Brewer Nov 9 at 11.30 Off Rec, 19, Exchange st, Bolton
WILSON, GEORGE RINGROSE, Staxton, Yorks, Farm Servant Nov 10 at 4 Off Rec, 48, Westborough, Scarborough

ADJUDICATIONS.

BLENKINSOPP, THOMAS BRACK, Newbottle, Durham Joiner Durham Pet Oct 27 Ord Oct 27
DEXTER, ALFRED, Knossington, Leicester, Grocer Leicester Pet Oct 28 Ord Oct 28
ENGLAND, WILLIAM JOHN, Okehampton, Devon, Licensed Victualler Plymouth Pet Oct 26 Ord Oct 26
EVANS, GEORGE HAMBLETT, Sutton Coldfield, Warwick Butcher Birmingham Pet Oct 28 Ord Oct 28
FARMER, THOMAS, Pontycymmer, Glam, Fruiterer Cardiff Pet Oct 27 Ord Oct 27
FERLY, JOSEPH, Birmingham, Provision Merchant Birmingham Pet Oct 6 Ord Oct 28
GOODWIN, HERBERT, Colchester, Cycle Agent Colchester Pet Oct 27 Ord Oct 27
HARGREAVES, ALFRED WILLIAM, Read, Lancs, Butcher Burnley Pet Oct 27 Ord Oct 27
HOAD, BURTON CHARLES, and GEORGE ROBERT BISHOP, Maidstone, Lime Burners Maidstone Pet Oct 26 Ord Oct 26
OSBORNE, HERBERT COVENTRY BASSET, Whyteleafe Surrey High Court Pet Oct 27 Ord Oct 27
PAWSON, GEORGE HERBERT, Patrington, Yorks, Butcher, Kingston upon Hull Pet Oct 27 Ord Oct 27
RANSON, JOHN, Ringwood, Hants, Baker Salisbury Pet Oct 27 Ord Oct 27
SMITH, WILLIAM JOHN, St George, Bristol, Tailor Bristol Pet Oct 26 Ord Oct 26
STEVENS, REGINALD, Sheffield, Commercial Traveller Sheffield Pet Oct 28 Ord Oct 28
WALKER, JOHN, Bolton, Botanical Brewer Bolton Pet Oct 26 Ord Oct 26
WRAGG, DAVID DAVY, Dronfield, Derby, Cutlery Manufacturer Chesterfield Pet Oct 27 Ord Oct 27